



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

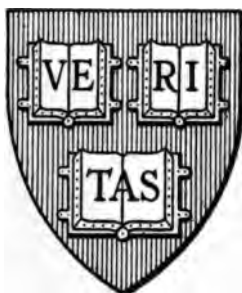
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Econ 4900.5

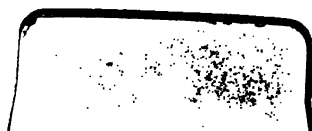
Gordon

The War on The Bank of the United  
States

Econ 4900.5



HARVARD  
COLLEGE  
LIBRARY











16-4  
37

---

**THE WAR**

ON

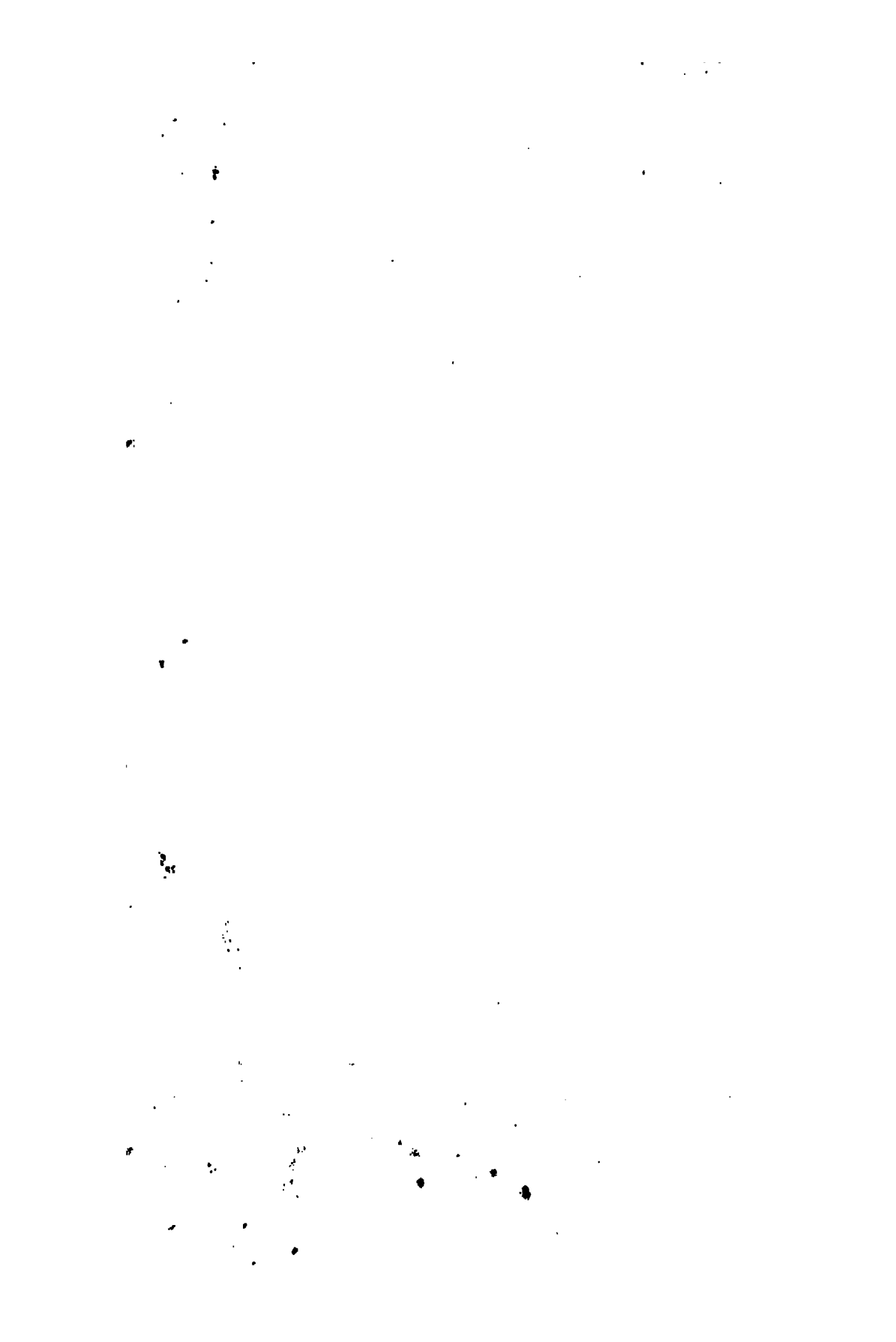
**THE BANK OF THE UNITED STATES;**

OR,

A REVIEW OF THE MEASURES OF THE ADMINISTRATION AGAINST THAT INSTITUTION AND THE PROSPERITY OF THE COUNTRY.

---









THE WAR

ON

THE BANK OF THE UNITED STATES;

OR,

A REVIEW OF THE MEASURES OF THE ADMINISTRATION AGAINST THAT INSTITUTION AND THE PROSPERITY OF THE COUNTRY.

---

"Darkness *was* upon the face of the deep."

"And God said: let there be light."

---

*By Thomas F.*

*Gordon*

Philadelphia:

KEY & BIDDLE, 23 MINOR STREET.

1834.

Econ 4900.5

1050

1050

### ADVERTISEMENT.

THE following sheets carry with them whatever apology may be necessary for their publication. When interests, so important to the country as a sound and uniform currency and the legitimate construction of the Constitution, are endangered, it is not less the duty, than the privilege, of the citizen, to participate in their discussion. It seemed to the author, that a concise account of the war on the Bank, with an inquiry into its causes and effects, would, at this moment, be useful in determining the great questions which Congress have remitted for decision to the people. In preparing such a work, he has derived much assistance from the debates in Congress; and has used, frequently with, yet often without, acknowledgment, the opinions of the principal debaters, governed by no other motive in his extracts, than to render his own views effective.

June 23, 1834.

## THE WAR ON THE BANK.

THE foreigner, who, impelled by the desire to provide for himself and his progeny a safe and happy home, should have visited this country in May 1833, would have found, everywhere, abundantly, all the public and private sources of enjoyment which the most favourable descriptions of our government, our people, and our pursuits, might have taught him to expect. He would have beheld "the people delighted or contented with the apparent adjustment of some of the most fearful controversies that had ever divided them;" the debt, which, for many years, pressed upon the national resources, extinguished; the necessities, and many of the luxuries of life, freed from impost, attainable almost at the cost of production; our money currency, the great instrument of successful economy, in a uniform and sound state; the chief magistrate of the Union, lately elected by a large majority, in condition to give to his administration the greatest unanimity, zeal and success, and, almost to extinguish party feuds; nature rewarding the husbandman with exuberant crops, and trade replenishing the coffers of the merchant and the nation; "the spindle and the shuttle, and every instrument of mechanic industry, pursuing their busy labours with profit; and internal improvements bringing down the remotest West to the shores of the Atlantic, and combining and compacting the dispersed inhabitants of our widely extended territory, as the inhabitants of a single state."

Satisfied with the scenes around him, and the pleasant anticipations they justified, our foreigner would have returned to the eastern shores of the Atlantic to prepare for emigration. But how changed the scene, when, in May 1834, he should revisit it!

The great works which were annihilating time and space are suspended, or sluggishly prosecuted; the contractors for public loans, and the subscribers to corporate stocks, being unable to pay their instalments; the instruments of the mechanic are idle, and their dispirited master, unemployed, either suffers want or

anticipates its horrors, whilst consuming the stores of his successful industry; trade, at home and abroad, is greatly diminished; exchange, foreign and domestic, is depressed, and bills are negotiated with much difficulty; the price of public and corporate stocks has fallen from ten to forty per cent; and the principal articles of domestic production are sunk in still greater proportion, whilst real estate can be sold only at a yet greater sacrifice; money can no longer be procured on mortgage, even at the highest legal rate of interest, and is attainable on good paper, only, at great usury; corporate companies, in some instances, are unable to pay the interest on their borrowed money; the State banks, generally, without power to discount new paper, and the Bank of the United States contracting its accommodations, which heretofore, like fructifying streams, gave life and vigor to enterprising labour; the currency of the country, deranged and dislocated, is fast verging from a specie medium to one of worthless paper—some of the State banks having already declared their inability to redeem their notes with coin; the suffering and indignant people are, everywhere, in primary meetings, declaring their grievances, reproaching their chief magistrate and his counsellors with abuse of delegated, and assumption of unlawful, power, and petitioning the unyielding Congress for instant and effectual relief.

Our astonished, but intelligent emigrant, doubting the reports of his too faithful senses and the testimony of his understanding, asks, whether these appearances be real, or the misrepresentations of factious partisans, got up for effect? But, entering the assemblies of the people, and observing the classes of which they are composed, his doubts instantly vanish. He sees, not some twenty or thirty party dependants, convened to maintain, with their voices, whatever their leaders may assert, to gain their daily bread; but thousands and tens of thousands of merchants and manufacturers, agriculturists and artisans, who quit not their employments for ordinary causes, nor busy themselves in public concerns, unless their liberties or means of prosperity be endangered. Assured that the appearances which every where meet his eye are not delusive, he seeks the cause of the extraordinary change; applying to those sages, whose long experience in public and private affairs has well fitted them to comprehend and unfold their most occult springs; and whose condition and stake in the community blend their interest, inseparably, with the public weal.

His request for information is thus answered:

“All the distress and embarrassment which astonishes you, is ascribable to a sudden, extraordinary and increased demand for commercial credit. The causes which have led to this, and which prevent its gratification, are somewhat complex, and re-

quire patient attention to be thoroughly understood. Our time permits, only, that we indicate, so that you may pursue, them, at leisure.

"1. During a series of years of uninterrupted prosperity, the two great classes of the commercial community, the lender and the borrower, the capitalist and the enterprising and industrious operator, who makes capital productive, acquired almost boundless confidence in each other; the banks extended their loans to the utmost bound of safety; the merchant and the manufacturer employed their proper and borrowed funds in enterprizes commensurate in their extent with their pecuniary facilities, and requiring the continued and uninterrupted use of the capital invested. In this condition, any cause which required the lender to withdraw the accustomed accommodation, and particularly the recal of advances, would necessarily produce embarrassment and distress among men of business, even though there should be little overtrading; and this distress would be greater where its cause could not be foreseen and provided for.

"2. Under the old system of collecting the duties, they did not become payable until about the time when the importer was paid by the consumer. Under the system resulting from the compromise of the tariff, the importers not only collect, as before, but in fact advance to government one-half of the whole amount of duties on importation, which is ultimately paid by the consumer. An additional amount of capital, therefore, equal to that of the duties, is now required, in order to carry on the same quantity of business, in articles on which the duties are payable in cash, or at much shorter periods than formerly.

"3. In New York, and, perhaps, in some other of the Atlantic cities, large amounts of stocks, principally from the southwest, had been purchased, mainly with a view to their sale in the English markets. This had not, of late, answered the expectations of the contractors; and though they may have borrowed abroad, to a considerable extent, on the credit of those stocks, a large amount remained on hand, and absorbed a corresponding portion of capital or credit.

"But the increase of credit, thus required, might, probably, have been supplied by domestic capitalists, by loans from abroad, and, particularly, by a liberal extension of the accommodations of the United States Bank, had not that institution been restrained by prudential reasons from increasing the amount of its discounts. To the causes which imposed on the Bank this duty, are to be ascribed the disastrous effects now visible on the prosperity of the country.

"4. By the act of 10th April 1816, Sec. 15, incorporating the Bank of the United States, it is provided, that, during the continuance of the act, and whenever required by the Secretary of



the Treasury, the Bank should give the necessary facilities for transferring the public funds from place to place, and for distributing them in payment of the public creditors, without charge, and should perform the duties of commissioners of loans, &c.

"By Section 16, the deposits of the money of the United States, in places where the Bank and branches may be established, are to be made in the Bank or branches, unless the Secretary of the Treasury shall, at any time, otherwise order and direct; in which case, he is required immediately to lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reasons of such order or direction.

"And by Section 20, in consideration of the exclusive privileges and benefits conferred by the act, the Bank agreed to pay to the United States one million and a half of dollars.

"Six years before the charter of the Bank would expire, the administration of the government, unprovoked, declared war against the institution, which it has since zealously and unremittedly persecuted. In the summer of 1833, threats were uttered, by officers of the government, of withholding from it the deposits of the public moneys, which compelled the Bank to prepare for the attack, by limiting its business within narrower bounds than would otherwise have been necessary. On the 1st of October the threatened stroke was stricken. The deposits were actually withheld, by order of the Secretary of the Treasury. At this period, however, although the amount of the loans of the Bank had been reduced, voluntarily, and by the ordinary course of business, in this season of the year, about four millions, the public had suffered no inconvenience; nor would this small reduction have given cause of complaint. In the Atlantic districts, especially in the city and state of New York, portions of the Union most obnoxious to commercial distress, the State banks had not decreased their discounts; which were, indeed, greater on the 1st of October 1833, than in January of that year. In the great West, the coming storm had cast no shadow before it; and the echo of its thunders were unheard. But great change in the equilibrium of the atmosphere is not the more certain precursor of the tempest, than is the derangement of the currency the forerunner and the cause of pecuniary distress.

"The hostility of the Government against the Bank, and, more especially, its demonstration in the removal of the deposits, created apprehensions of danger, immediately, to the Bank itself, and remotely, to all the moneyed institutions and concerns of the country. Retrenchment at all, and rigorous enforcement of its claims at some points, were presumed indis-

pensable to the safety of the Bank. The extent, being conjectural, was exaggerated. There was communicated everywhere that uncertainty of the future, which impels every man to seek provision for the coming month, as well as for the passing day. The capitalists, more fearful, perhaps, than men of less wealth, withdrew their funds from circulation. Men saw that the relations between the government and the Bank were, thenceforth, to continue hostile; that, between it and the substituted banks, they were to be those of mistrust; and that, without a National Bank, the stability and safety of the whole monetary system of the country would be endangered.

“As a political measure, the attack was alarming, being made in defiance of a solemn vote of the late Congress, at their last session; and, as if with the intention to forestall the opinion of that which must meet within sixty days after the interference was made; and as if to encroach upon its legitimate rights. It was appalling to men of business, who rely for the success of their operations on that stability of those of the Government, which can only be guarantied by law, unexpectedly to discover, that the commerce, the currency, and the moneyed institutions of the country, its credit, and their own credit and fortunes, were, thenceforth, to depend on the private opinions, the presumed wisdom, and the arbitrary will of one man. Minor causes increased the apprehensions, and restricted more and more the use of private capital and private credit; and the alarm became a panic, not dependent upon, or to be explained as a matter of ordinary reason. The banks, indeed, (with some few exceptions,) protected by the impossibility of exporting specie without loss, have preserved their credit, and been enabled, generally, to continue, in some measure, their usual accommodations. Private credit has been most deeply affected; and the leading feature of the present distress is the consequent interruption, and, in many cases, cessation, of business.

“The importers diminish, greatly, their orders and their purchases of foreign exchange: which, for the first time for many years, is at a discount. The intermediate wholesale merchants, fearful to contract new engagements, are anxious only about the remittances necessary to discharge those already contracted. Those engaged in the exportation of the produce of the country, doubtful whether they can sell the foreign bills, on which that exportation depends, give but limited orders for it. The country merchants and the manufacturers are no longer permitted to draw, as formerly, in advance, on the cities for the products of the soil or of their industry. Men, with small capitals, if at all extended, when disappointed in the remittances they naturally expected, are crushed. New enterprizes and engagements of every description are avoided; and in many in-

stances, workmen are discharged, or a reduction of wages required. The actual evils are aggravated by general apprehension; but the alarm can scarce be greater than the true state of things justifies. In every aspect of the subject, the true and efficient remedy consists in restoring confidence and credit, which might be almost instantaneously effected by replacing the Bank in the situation it had heretofore occupied, and assuring its continuance; thus enabling it to resume its functions to their usual extent.

"In addition to these remarks, we give you the views of Mr. Webster, a distinguished Senator, as exhibited in his speech on this subject:—

"The Treasury, in a very short time, has withdrawn from the Bank 8,000,000 dollars, within a fraction. This call, of course, the Bank has been obliged to provide for, and could not provide for without more or less inconvenience to the public. The mere withdrawing of so large a sum from hands actually holding and using it, and the transferring of it, through the bank collecting, and through another bank loaning it, if it can loan it, into other hands, is itself an operation which, if conducted suddenly, must produce considerable inconvenience. And this is all that the Secretary seems to have anticipated. But this is not the one-hundredth part of the whole evil. The great evil arises from the new attitude in which the Government places itself toward the Bank. Every thing is now in a false position. The Government, the Bank of the United States, the State banks, are all out of place. They are deranged and separated, and jostling against each other. Instead of amity, reliance, and mutual succour, relations of jealousy, of distrust, of hostility even, are springing up between these parties. All act on the defensive; each looks out for itself; and the public interest is crushed between the upper and the nether millstone. All this should have been foreseen. It is idle to say that these evils might have been prevented by the Bank, if it had exerted itself to prevent them. That is a mere matter of opinion; it may be true, or it may not; but it was the business of those who proposed the removal of the deposits, to ask themselves how it was probable the Bank would act, when they should attack it, assail its credit, and allege the violation by it of its charter; and thus compel it to take an attitude, at least, of stern defence. The community have certainly a right to hold those answerable, who have unnecessarily got into this quarrel with the Bank, and thereby occasioned the evil, let the conduct of the Bank, in the course of the controversy, be what it may.

"In my opinion, sir, the great source of the evil is the shock which the measure has given to *confidence* in the commercial world. The credit of the whole system of the currency of the country seems shaken. The State banks have lost credit, and lost confidence. They have suffered vastly more than the Bank of the United States itself, at which the blow was aimed.

"The derangement of internal exchanges is one of the most disastrous consequences of the measure. By the origin of its charter, by its unquestioned solidity, by the fact that it was *at home every where*, and in perfect credit every where, the Bank of the United States accomplished the internal exchanges of the country with vast facility, and at an unprecedented cheap rate. The State banks can never perform this equally well; they cannot act with the same concert, the same identity of purpose. Look at the prices current, and see the change in the value of the notes of dis-

tant banks in the great cities. Look at the depression of the stocks of the State banks, deposit banks and all. Look at what must happen the moment the Bank of the United States, in its process of winding up, or to meet any other crisis, shall cease to buy domestic bills, especially in the Southern, Southwestern, and Western markets. Can any man doubt what will be the state of exchange when that takes place? Or can any one doubt its necessary effect on the price of produce? The Bank has purchased bills to the amount of sixty millions a year, as appears by documents heretofore laid before the Senate. A great portion of these, no doubt, was purchased in the South and West, against shipments of the great staples of those quarters of the country. Such is the course of trade. The produce of the Southwest and the South is shipped to the North and the East for sale; and those who ship it draw bills on those to whom it is shipped; and these bills are bought and discounted, or cashed by the Bank. When the Bank shall cease to buy, as it must cease, consequences cannot but be felt, much severer even than those now experienced. This is inevitable. But, sir, I go no further into particular statements. My opinion, I repeat, is, that the present distress is immediately occasioned, beyond all doubt, by the removal of the deposits; and that just such consequences might have been, and ought to have been, foreseen from that measure, as we do now perceive and feel around us.

‘Sir, I do not believe, nevertheless, that these consequences were foreseen. With such foresight, the deposits, I think, would not have been touched. The measure has operated more deeply and more widely than was expected. We all may find proof of this, in the conversations of every hour. No one, who seeks to acquaint himself with the opinions of men, in and out of Congress, can doubt that, if the act were now to be done, it would receive very little encouragement or support.’

“In the meanwhile, in this deepest depth of darkness, there is no reason for despair. The usual channels of circulation are, indeed, obstructed; but the products of the national industry, though stagnant, are abundant. The actual capital of the country still remains unimpaired, although the nominal value of property be for a time lessened. There is no foreign pressure, and the skill and activity of our intelligent merchants must, after awhile, renew the broken chain of operations. The evil, through a painful process, is gradually working its remedy:—In proportion as no new engagements are contracted, the whole mass is daily lessened, and we must, after a period of severe and protracted suffering, unnecessarily inflicted, be placed in a situation better adapted to a new order of things. These consolatory anticipations are confirmed by the fact, that the eyes of the people are opening upon their true interests; and at their command, the chains which bind many of their representatives to the car of the administration, will be broken like the cords upon the Nazarite.”

Having thus explained to our inquiring emigrant, chiefly from the pen of one of the most distinguished statesmen and able financiers of the nation,\* the causes generally assigned for the lament-

\* Mr. Gallatin. Report of New York Union Committee.

able condition of the country, we shall leave him, whilst awaiting better times, to trace out and illustrate, more fully, the three first of those causes; and assume to ourselves the task of considering in all of its many phases, the extraordinary executive measure, "the Removal of the Deposits," which has awakened the deepest feeling in the country, not only for the preservation of its commercial prosperity, but for the maintenance of those divisions of political power, those checks and balances, which have been established for the security of political liberty.

In considering this important subject, we design to treat it with all the candour which a profound veneration for historical truth should inspire. But we should be ashamed to pretend that we have not formed a decided opinion upon it; because, we hold such to be a profession of dishonourable and disgusting indifference to the sufferings and danger of the country.

The executive department of the general government has declared an interminable war against the Bank of the United States, which it does not more ardently pursue, than loudly and energetically avow. The motives of this extraordinary enmity against a fiscal agent, whose great utility and correct fulfilment of its duties have been almost universally acknowledged, are asserted to be of a disinterested and patriotic character. How untruly asserted, will be most obvious in the progress of our investigation. In pursuing our purpose we propose,

I. To trace the hostility of the President against the Bank, from its first demonstration to the removal of the deposits.

II. To examine the right of the President to direct and enforce the removal.

III. To consider the reasons of the Secretary of the Treasury assigned therefor, and to show the course of the two houses of Congress thereon.

IV. To inquire into the right claimed for the President to remove at his pleasure from office, all persons whom he is empowered to nominate;—a claim which has become a most important feature of this remarkable case.

I. It is said, General Jackson was ever among those who deny the constitutional right of Congress to charter a bank, under any form; and, that, from this cause, his hostility to the Bank of the United States originated. If this be true, it is among the extraordinary features of his administration, that such right has not been denied in any official document. Proper occasions for expressing such an opinion presented themselves in his several messages, and, especially, in his veto on the bank bill of 1832. Yet none were used; and we may justly infer, that no such sentiment existed, until a very late period; or that it was suppressed for cause. Let us examine how the execu-

tive sense has been developed; since it is important, not only in determining the cause of executive operations against the bank, but has become essential for their defence.

In his message to Congress of December 1829, the President says:

"The charter of the Bank of the United States expires in 1836, and its stockholders will, most probably, apply for a renewal of their privileges. In order to avoid the evils resulting from *precipitancy*, in a measure involving such important principles, and such deep pecuniary interests, I feel, that I cannot, in justice to the *parties* interested, too soon present it to the deliberate consideration of the legislature and the people. Both the constitutionality and the expediency of the law, *creating this Bank*, are well questioned, by a large portion of our fellow-citizens; and it must be admitted, by all, that it has failed in the great end of establishing a uniform and sound currency."

In this, there is no committal upon the question of constitutionality; and in a subsequent passage, it is submitted "whether a National Bank, founded on the credit of the Government and its resources, might not be devised?"

In the message of 1830, speaking of the Bank, he observes:

"Nothing has occurred to lessen, in any degree, the danger which *many of our citizens* apprehend from that institution, *as at present organized*. In the spirit of improvement and compromise which distinguishes our country and its institutions, it becomes us to inquire, whether it be not possible, to secure the advantages afforded by the present Bank, through the agency of a *Bank of the United States*, so modified in its principles and structure, as to obviate constitutional and other objections."

The subject is very briefly treated in 1831, after the following manner:

"Entertaining the opinions heretofore expressed in relation to the Bank of the United States, *as at present organized*, I felt it my duty, in my former messages, frankly to disclose them."

The veto message of July 1832, declares:

"A Bank of the United States is, in many respects, *convenient for the government and useful for the people*. Entertaining this opinion, and deeply impressed with the belief, that *some of the powers and privileges possessed by the existing Bank are unauthorized by the constitution*, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty, at an early period of my administration, to call the attention of Congress to the practicability of organizing an institution, combining all its advantages and obviating these objections. I sincerely regret, that, in the act before me, I can perceive, *none of those modifications of the Bank charter, which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the constitution of the country*." . . . . "That a *Bank of the United States*, competent to all the duties which may be required by the government, might be so organized, as not to infringe on our own delegated powers or the reserved rights of the States, I do not entertain a doubt. *Had the Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed.*"

Even so late as July 1833, it is apparent, from the communications of Mr. Duane, that the President's hostility to the Bank was not founded on constitutional scruples; for, when the Secretary introduced, into the instructions of his agent, a declaration that the President was opposed to *any national bank*, he modified this, so as to announce opposition only to an institution, organized on the principles of the existing Bank.

We have nothing, therefore, official, to warrant the conclusion, that the President would not unite in chartering *the Bank*, with *suitable* modifications; nothing to show that determination so frequently and fiercely uttered since the removal of the deposits, "never to recharter the United States Bank, or sign a charter for any other bank." Accordingly, in the canvass which ensued the Veto, the partisans of the President used his reserve for the purpose for which it was designed; and boldly asserted, wherever such assertion would be serviceable, that he was not opposed to the Bank with proper amendments, and that his objections would be removed, and the Bank sustained, in the event of his re-election.

Constitutional principles, then, have not caused the President to resist the wishes of the people for the continuance of an institution, which, next to the enjoyment of civil and religious liberty, has contributed most to their welfare. We have seen him, upon questions of mere *expediency*, array himself against the councils of the nation, and exercise the most exceptionable power of the constitution, the veto, as if it were a hereditary right, from a regal ancestor. We have seen him, the chief executive officer, whose voice in legislation should, on sound political principles, be heard, only, in extreme cases, and when the power delegated to the Executive by the constitution is assailed—we have seen him pervert that power to defeat the wishes of the people, distinctly expressed through their immediate representatives. Is there an intelligible motive which can be assigned for this extraordinary conduct? We think there is, and shall endeavour to explain it.

The country passed through the first cycle of its existence by a conservative impulse which has now ceased to operate. The parties which grew out of the revolution, and the events succeeding it, were formed upon certain political principles, which, like religious dogmas, became subjects of supreme veneration. The leaders were estimated only as they were faithful and zealous apostles of these principles. For the high offices of the nation, the revolution had supplied candidates, who, already rich in fame, would not risk that wealth in experiment. They had no inducement to assume forbidden powers for the gratification of themselves or their partisans. The men and the parties of our early national history have passed from

the scene. Party principles growing from the revolution and its consequences have been amalgamated by the success of our political system; and have been succeeded by a new spring of political action, more exclusively selfish. Jacksonism is neither federalism nor democracy. It has, indeed, relation to political principles of no kind; being a system of peculiar and unmixed selfishness—the leaders of the party grasping, by any means, every species of power, and their dependants yielding, for reward, the most abject service.

There is in military fame an attraction which has ever proven irresistible with the mass of mankind, from fear, from gratitude, from sympathy with energetic power, or from a combination of all these causes. It is an indispensable, a necessary evil of the social system, requiring perpetual vigilance to repress it. It is the besetting danger of republics; the open or insidious, but ever active, enemy of political and civil liberty. The military chieftain, when able and ambitious, is ever ready to use its influence for forbidden ends; and if he want talent or disposition for self-aggrandizement, he becomes the instrument of others.

In General Jackson, there is no want of ambition, whatever there may be of ability. That he is the tool of others, every passing day brings new and indubitable evidence; and thus, the nation is subjected to the action of two powerful causes of evil.

The nomination of General Jackson for the presidency may have been prompted by grateful recollection of his services. But his *election* is ascribable to other causes—to the combination of aspiring politicians, who made his elevation the means of their own. Qualification for the office was wholly unconsidered. The honours and emoluments of office, had from the election of Mr. Jefferson flowed in a steady unperturbed stream, in a channel which excluded a large portion of the enterprising and ambitious spirits, even of the reigning party, and the whole of the remnant and progeny of federalism, as effectually, as if they were legitimately proscribed. To participate in office, it was requisite to overthrow the reigning dynasty, to break the line of succession. To this end, a combination was formed between all the *Outs* and such of the *Ins* as feared to lose, or hoped to gain, by the change. General Jackson became the leader of the combined forces, whose banner, with the broad legend of "BOOTY," was flung to the breeze, and whose war cry, the "*Spoils of Victory*," was shouted, not only in our cities, but in the remotest and almost uninhabited forest glens. The battle was won; and the principles on which it was fought were proclaimed by the President, in his first annual message, announcing "rotation in office" as a cardinal rule of his administra-



tion. This put, at once, every official incumbent and every official aspirant, in manacles at his feet.

Every political society is divisible into two great classes, the speculative and the practical,—that which indicates the way, and that which provides the means, of progression. The first, like the superincumbent wave of the ocean, forming an inconsiderable portion of the mass of moving waters, is ever visible, and is swollen and stirred into foam and spray by every gale that blows. The second, like the great depths of the sea, is moved only by powerful causes, but when urged by the hurricane or earthquake, is irresistible. The first class, in the calms of state, usurps the functions of the whole body politic, and rules the nation. It is the proper province of party, and is that for which, on ordinary occasions, political gamblers play. The second comes into voluntary action, only, when the deepest interests of social life are at stake; and then, the first is made the servant of its will. It is the first class in which Jacksonism is triumphant. The force of the second is about to be felt.

The immense power lodged in the executive of the United States was almost unknown. It had been used for the public interest only; and its capacity for evil, for party rule, was not dreaded. It remained for General Jackson to reveal its dangers, and, happily, to awaken the intelligence of the country against them. Hitherto, the fifty thousand executive appointees were deemed by themselves and the public, to be the servants of the people; but they are now claimed, and, in truth, are the servants of the President; responsible to him, in thought and deed, and removable, not for malversation in office, only, but, also, because they may not fulfil the duties imposed by party discipline. We have, thus, attained the worst stage of party feuds, in which every thing is dependant on the will of party leaders. The personal parties of Marius and Sylla, of Cæsar and Pompey, are rising among us. Office and political distinction are attainable, only, by subservience, from which conscious integrity shrinks; and the incumbent can preserve his place, only, whilst oblivious of the public weal. The worst evils which flowed from the corruption of the ancient republics of Greece and Rome would soon follow, were it not, that the mass of the people, which seeks in government, only, the general happiness, is in action to secure it.

It is to maintain a party system such as we have described, that the President, already endowed with the armed power of the nation, has sought, and is seeking, the unrestrained control of the public treasure. For this purpose, the prostitution of the Bank of the United States to the unhallowed desires of party, was solicited, and from this cause has its resistance been followed

by persecution. Hence, too, the project of a national bank, founded on the credit of the government, and its revenues—of that institution which the executive would have furnished, had he been, primarily, called upon to legislate for the people.

Had the Bank of the United States been a subservient political instrument, as the design was to make it, it might have been the cherished of the *party*. The attempt, thus, to degrade it was duly and seasonably made, and we proceed to give its history.

Soon after the election of General Jackson "a meeting was held in Washington of the principal chiefs of the *party*, to consider the means of perpetuating their new authority; and the possession of the Bank was among the most prominent objects of the assembly. The first open manifestation of their purpose was in June 1829, when a concerted effort was made, by the executive officers, to interfere in the election of the board of directors at Portsmouth. Mr. Woodbury, the present Secretary at War, most conspicuous in this attempt, did not hesitate to avow, in a letter to the Secretary of the Treasury, which, though marked "confidential" was published by the Committee of Investigation, in 1832, that he wished the interference of the Government to remove the president of the Branch at Portsmouth, alleging that he (the president), "was a particular friend of Mr. Webster and his political character, doubtless, well known to the Secretary;" and requesting the last to communicate with some of the directors of the Mother Bank, in favour of such a change.

This letter was transmitted to the Bank by the Secretary, who observed, that "from some expressions in the letter, it may be inferred, that it is partly founded on a supposed application of the influence of the Bank with a view to political effect;" in consequence of which, he deemed it his duty to present it to the Bank, "with the views of the administration in relation to it." At the same time, Mr. Hill, then unconfirmed comptroller of the Treasury, and now a senator of the United States, sent a memorial from the members of his political party in the legislature of New Hampshire, requesting the removal of Mr. Mason; and by another missive gave his opinion to the Bank, that no measure short of Mr. Mason's removal "*would reconcile the people of New Hampshire to the Bank*," and that "the friends of General Jackson, in New Hampshire, had but too much reason to complain of the management at Portsmouth." Finally, the Secretary at War ordered the transfer of the pension fund from the Branch Bank at Portsmouth to another bank in Concord—an act, so obviously in violation of the laws, that being resisted by the Bank, it was retracted by the Secretary.

The Bank, upon these extraordinary instances, deemed it necessary to extinguish, for ever, every hope of converting it into

a party engine. To this end, the President of the institution addressed the following, among other remarks, to the Secretary of the Treasury.

"Presuming that we have rightly apprehended your views, and fearful that the silence of the Bank might be hereafter misconstrued into acquiescence with them, I deem it my duty to state to you, in a manner perfectly respectful to your official and personal character, yet so clear, as to leave no possibility of misconception, that the Board of Directors of the Bank of the United States, and the Board of Directors of the Branches of the Bank of the United States, acknowledge not the slightest responsibility of any description, whatsoever, to the Secretary of the Treasury, touching the political conduct of their officers—that being a subject on which they never consult, and never desire to know the views of any administration." "Their responsibility is to Congress, and to Congress alone: *no executive officer, from the President of the United States downwards*, has the slightest authority to interfere in it; and there can be no more warrant for suggesting the views of the administration to the Bank of the United States, than to the Supreme Court of the United States." "For the Bank, which has specific duties to perform, and which belongs to the country, and not to any party, there is but one course of honour or of safety. Whenever its duties come in conflict with the spirit of party, it should not compromise with it, nor capitulate with it, but resist it; resist it openly and fearlessly. In this, its interest concurs with its duty, as, it will be found, at last, such is the good sense of the country, that the best mode of satisfying all parties, is to disregard them all." From this manly, independent and rational expostulation, two important deductions are to be drawn. 1st. That whatever powers the Bank may possess, whether for good or for evil, there is no disposition to pervert them to the latter purpose: and, 2d. That, the Bank, however erroneously, a contrary policy may have been ascribed to it, has no interest whatever, in blending its concerns with those of political partisans.

When we observe, that the conduct of the President of the U. States towards the Bank has not been directed by an earnest and irrepressible zeal for the integrity of the constitution—that he has adopted, as governing principles of his administration, the maxims—that "rotation in office gives healthful action to the political system;" that "public offices are the 'spoils of victory,' to be divided among the conquerors in party combat;" and that, "it is sound political morality to reward friends by appointment to, and punish enemies by removal from, office," we may readily believe, that the power and wealth of the Bank would be sought, by one professing such principles, as parts of

the spoils of victory, in order to sustain the views and ascendancy of the party; and, that failing to bend the institution to his views, the Executive would resolve to break it.

And yet the President has ventured to say, in his protest, to the Senate, "If I had been ambitious, I should have sought alliance with that powerful institution, which even now aspires to divided empire." Seek an alliance to gratify his ambition! Has he not done it? Has he not attempted, through one of the humblest of his instruments, to compel the obedience of that institution? Has not another of his agents (Mr. Kendall) since boasted, that he would bring the institution as a reptile to the feet of the Executive? If the alliance, he means, be that which would render the Bank subservient to the Executive, a submissive instrument in his hands, he did, in fact, seek that alliance, which the Bank indignantly rejected. The President adds, too, "If I had been venal, I should have sold myself to its designs." A President of the United States make a merit of not having sold himself for money! We will not, ourselves, do the President so much wrong, as to state, even hypothetically, the possibility that he would have bartered his large honours for trash; but, we are bound, in justice to the Bank, to say, that he never had occasion to pray against the temptation.

But, again, we say, that the incorruptibility of the Bank is the cause of the war against her. War to the knife. And one, in which the assailing party is more reckless of consequences, cannot be found in the political history of the world. The cause assigned by the Bank being the true one, the motives of the Executive find a parallel in the vengeance of every tyrant for resistance to his will; in the desire of every demagogue to grasp and secure power. If the cause, now, assigned by the Executive be credited, the war was commenced and is waged merely, for the sake of abstract opinion. For, when the country, in 1829, was startled from its condition of peaceful and unsurpassed prosperity, by the threatening voice of the President, the Bank had committed none of the supposed sins which are now assigned as causes for the most deadly blows against it.

It had scrupulously fulfilled all the objects of its creation; had raised the currency from a deranged and unsound state to one of uniformity and purity, unequalled by that of any country of the same geographical extent; had performed all its duties to the government—transmitting the public moneys from one point of the Union to another, when desired, promptly and without charge—serving its financial operations as no government was ever before served—collecting and disbursing in the space of thirteen years more than three hundred and fifty millions of dollars, without the loss of a single cent—reducing the exchange on the most distant commercial operations to a

charge scarce more than nominal;—and, in a word, spreading around it, all the blessings, which security and judicious assistance could give, to the government and the people. All which was acknowledged, and gratefully proclaimed, by every officer connected with our fiscal concerns, and by the millions of citizens rendered happy in a prosperous commerce; and all which it was proposed by the Executive to jeopard, for the maintenance of an abstract opinion, which had been repudiated, for years, by a large majority of the people. Can men who would, thus, sacrifice the substantial realities of life to speculative notions, be qualified to guide the destinies of a nation? Or can it be believed that such notions are the true motives of any statesman?

It is unquestionable, that *party leaders* did attempt to use the Bank for their purposes, and that the attempt was promptly and effectually repelled; that, these leaders have the confidence of the President; and that his feelings have been so artfully wrought upon, that the destruction of the Bank has become his ruling passion. This adversary position of the Bank and the Executive, could the Bank be preserved in all its usefulness, would be no cause of apprehension to the country. Mr. M'Duffie has, we think, placed this matter in its true light.

"If I were to decide," said he, (in his nervous speech on the removal of the deposits, Dec. 19, 1833) "upon principle, what should be the course of a National Bank, in regard to the politics of the country, I should say, that it is desirable, that the present, and all future banks of a similar kind, should be, habitually, opposed to the Executive Government. It would be an admirable balance in our system, and would tend to check the fearful tendency of Executive encroachment. We have nothing to fear from that operation. The real danger lies in an opposite direction. It is, that the President should convert the Bank into a mere instrument of his will, and should wield its power, which has been represented as so tremendous, in addition to the still more tremendous power which he derives from the patronage of such a Government, and that overwhelming tide of popularity, which will generally follow the man who distributes that patronage." We add, if the tenure of office depend wholly upon submission to every measure of the Executive, would not bank accommodations be subject to the same condition? And who doubts that such is the tenure of office, "that no man can, now, breathe the air that surrounds the palace, who does not think, precisely, as the President thinks, and who will not consent to be docked or stretched, until he fits the bed of Procrustes, and his political opinions are brought to the true Executive dimensions?" Upon this principle, officers have been discarded and offices filled;

and this is the promised reform." "Who, now, doubts, that if the local banks shall continue the depositaries of the public revenue, it will not be a matter of political bargaining, between them and the Executive, in order to insure the election of the candidate of the party, and that the *political* and *moneyed* power of the country will be concentrated in the same *place* and in the same *hands*?" "All these banks (the result is inevitable) will be actuated by the same political spirit, governed by the same influence and wielded by one man. Not only the twenty millions of public revenue, but a hundred millions of bank capital will be thus wielded for political purposes, to the corruption of public morals and the subversion of the public liberty."

The war of the Executive against the Bank of the United States began with the President's Message to Congress, in December 1829; some few days, or weeks, after the Bank had repelled the attempt to make her a party agent. The agitation of the country was then commenced by the distinct assertion, that the constitutionality and expediency of the Bank were questioned by a large portion of our fellow-citizens, and, that *all men admitted* that it had failed in the great end of establishing a uniform and sound currency.

The spirit that was to guide the war was obvious from the colour of these assertions. If a prejudice against the Bank, originally, caused by the dread of constructive extension of constitutional power, still lingered in some portions of the country, there was not a spot, from the busy scenes of the seaboard, to the almost uninhabited desert of the far West, in which its expediency was not admitted; in which, it was not apparent, that a uniform and sound currency had been established. One, only, attempt has been made, that we have seen, to support this last misrepresentation. Mr. Benton has declared in his place of the Senate, that "from the year 1818 to 1827, the Bank had issued no currency, at all, in the South and West; all its branches in those sections of the Union were shut up for eight years, nearly, preceding the Message. The branch drafts which have since been put out, in imitation of branch notes, only, began to issue, and that, in small quantities, by way of feeling the public pulse in 1827." What, it will naturally be asked, upon this declaration, was the circulation of the notes which these drafts supplied, and what were these drafts, which were abundant in 1829, but the currency, the uniform currency, of the country? And *sound* currency, too, except, as Mr. Benton further urged, the drafts, like the notes and other negotiable instruments, were liable to be counterfeited. In truth, so absolutely were the uniformity and soundness of the currency established in 1829, that no one of sound discretion has ventured to question them.

The Committee of Ways and Means, of 1829, Mr. M'Duffie chairman, to whom was referred so much of the President's Message as related to the Bank, declared themselves "constrained to express their respectful but decided dissent from his assertion that the Bank had failed to establish a uniform and sound currency, and that in this respect it had been productive of results more salutary than were anticipated by the most sanguine advocates of the policy of establishing it. *It has actually furnished a circulating medium more uniform than specie*; giving drafts, commanding specie at any point of the Union, at a per centage greatly less than it would cost to transport specie, and in many instances, at par." "When," add the Committee, "it is, moreover, considered, that, the Bank performs with the most scrupulous punctuality, the stipulation to transfer the funds of the government to any point, where they may be wanted, free of expense, it must be apparent, that the Committee are correct, to the very letter, in stating that the Bank has furnished, both to the government and the people, *a currency of absolute uniform value, in all places, for all the purposes of paying the public contributions, and disbursing the public revenue*. And when it is recollected, that the government annually collects and disburses more than twenty-three millions of dollars, those who are at all familiar with the subject, will, at once, perceive, that bills, which are of absolutely uniform value, for this vast operation, must be very nearly so, for all the purposes of general commerce."

The stability and uniformity of the currency is so important a result of the Bank, being the great object of the government in chartering it, and so indispensable to the uniformity and equality of taxation, and the security and facility of business, that we proceed to establish it by yet further testimony.

The Committee of the Senate, on Finance, to which was referred a resolution of the 30th December, 1829, directing the Committee to inquire into the expediency of establishing an uniform national currency, reported among other things,

"That the government had, for ten years preceding the first of January, 1830, received from 9000 agents, \$230,068,855 17. This sum has been collected in every section of this widely extended country. It has been disbursed at other points, many thousand miles distant from the places where it was collected; and yet, it has been so collected and distributed without the loss, so far as the committee can learn, of a single dollar, and without the expense of a single dollar to the government. That a currency by which the government has been enabled to collect and transfer such an amount of revenue to pay its army and navy, and all its expenses and the national debt, is unsafe and unsound, cannot readily be believed; for there can be no surer test of its sufficiency, than the simple fact, that every dollar received in the form of a bank note, in the remotest parts of the interior, is without charge converted into a silver dollar, at every one of the vast number of places where the service of the government requires its dis-

bursement. The Secretary of the Treasury, in his report of the 6th December, 1828, declares, that, during the four years preceding, the receipts of the government had amounted to more than ninety-seven millions of dollars, and that all the payments had been punctually met, and that it is the preservation of a good currency that can alone impart stability to property, and prevent those fluctuations in its value, hurtful alike to individuals and the nation. 'This advantage the Bank has secured to the community.'

In the meantime let it be observed, that this declaration of the Secretary was made one year before the declaration of the President, that the Bank had failed to establish a sound and uniform currency.

After exhibiting and commenting upon the low rates to which the Bank had reduced exchange, the committee proceed:

"This seems to present a state of currency approaching as near to perfection as could be desired; for here is a currency, issued at twenty-four different parts of the Union, obtainable by any citizen who has money or credit. When in his possession, it is equivalent to silver, in all his dealings, with all the 9000 agents of the government, throughout the Union. In all his dealings with the interior, it is better than silver; in all his dealings in the commercial cities, equal to silver; and if, for any purpose, he desires the silver with which he bought it, it is at his disposal, almost universally, without any diminution, and never more than a diminution of one quarter of one per cent. It is not easy to imagine, it is scarcely necessary to desire, any currency better than this."

These reports, approved by the most august bodies of the United States, to whom the subject peculiarly belonged, and was confided, by the Constitution, were entitled to the respect of the President, as the sincere sentiments of men distinguished by their zeal in support of his election, but, more on account of their truth. But, he has wholly disregarded them; opposing his own judgment, unenlightened by experience or study, to the voice of practical wisdom, speaking in the most conciliatory tones.

We will add to this evidence, the testimony of Mr. Calhoun, whose agency in the establishment of the Bank, and uninterrupted connection with the government of the country for many years, render it highly important.

"But, while I shall not condescend to notice the charges of the Secretary against the Bank, beyond the extent which I have stated, a sense of duty to the institution, and regard to the part which I took in its creation, compels me to notice two allegations against it, which have fallen from another quarter. It is said, that the Bank had no agency, or at least efficient agency, in the restoration of specie payment in 1817, and that it had failed to furnish the country with a uniform and sound currency, as had been promised at its creation. Both of these allegations I pronounce to be without just foundation. To enter into a minute examination of them, would carry me too far from the subject, and I must content myself with saying, that having been on the political stage, without interruption, from that day to this—having been an attentive observer of the question of the currency throughout the whole period—that the Bank has been an indispensable agent in



the restoration of specie payments; that, without it, the restoration could not have been effected short of the utter prostration of all the moneyed institutions of the country, and an entire depreciation of Bank paper; and that, it has not only restored specie payment, but has given a currency far more uniform, between the extremes of the country, than was anticipated or even dreamed of, at the time of its creation. I will say for myself, that I did not believe, at that time, that the exchange between the Atlantic and the West would be brought lower than two and a half per cent—the estimated expense, then, including insurance and loss of time, of transporting specie between the two points. How much it was below the anticipated point, I need not state; the whole commercial world knows, that it was not a fourth part, at the time of the removal of the deposits.”

But, there is another branch of the message of 1829, relating to this subject, which, taken in connection with subsequent events, is of the highest importance. It is observable, already, that the destruction of the Bank is not the sole passion of the President’s mind. Another, equally strong, is intimately blended with it, and is the true cause of the first. It is the establishment of a national bank, wholly dependant upon the government. The project is, now, for the first time, presented, wild and undigested, to be moulded upon “the credit of the government and its revenues;” but it is never again lost sight of. The Committee of Ways and Means instantly seized the cub, and showed that, into whatever form it might be licked, it would be a monster too hideous for sight. Apprehending at once the design of the Executive, they observe, that,

“Deeply impressed with the conviction that the weak point of a free government is the absorbing tendency of executive patronage, and sincerely believing that the proposed Bank would invest that branch of the government with a weight of moneyed influence, more dangerous in its character, and more powerful in its operation, than the entire mass of its present patronage, the Committee have felt, that they were, imperiously, called upon, by the highest considerations of public duty, to express the views they have presented, with a frankness and freedom demanded by the occasion.”

This first attack upon the Bank and the nation was repelled at every point. The Committee of Ways and Means distinctly put, and ably maintained, the following propositions: 1. That Congress had the constitutional power to incorporate a bank, such as that, of the United States. 2. That it is expedient to establish and maintain such an institution. And, 3. That it is inexpedient to establish a National Bank, founded upon the credit of the government and its revenues.

Thus rebuked and instructed, a decent respect for the legislature required, that the President should have left the subject to them and the people, until he was called to act upon it, officially, by the presentation of a bill for his approval. If, then, constitutional scruples prevailed to its rejection, however the veto might be regretted, it could not be condemned. But this, the only proper course, did not quadrate with the views of the

party. The nation, if suffered to discuss it, solely, as a question of policy, would, it was to be feared, recognise and pursue its true interests, and, in due season, recharter the Bank, and thus mar, forever, the design upon the Treasury. An appeal, therefore, was to be made from the councils of the nation to the Jackson party, whose energy was to be roused by incessant agitation. It was with this view, and certainly, with no hope of legislative action, that the President, in December, 1830, brought the Bank question again before the same Congress. With an invitation to reconsider the subject, he submitted, in a more specific form, the condemned project of a Treasury Bank; by which, at once claiming, as now, the right of the Treasury to dispose of the public deposits, an influence over the whole monetary power of the Union might be acquired. The evils of such an institution have been adverted to by Mr. Gallatin, and abundantly displayed in the congressional speeches on the removal of the deposits. As was to be expected, the Committee of Ways and Means, to whom that portion of the President's message was referred, gave no further attention to the subject.

On the convention of a new Congress in 1831, the President, in the concise manner we have already noticed, repeated his invitation; and, at the same session, the Bank applied for the renewal of its charter. This act of the Bank, to which it was stimulated by the course of the Executive for three successive years, has been denounced as premature, and as originating, solely, in hostility to the President.

"There are strong reasons," says that officer in his communication to his cabinet, 18th September, 1833, "for believing, that the motive of the Bank, in asking for a recharter, at that session of Congress, was to make it a leading question in the election of a President of the United States, the ensuing November." What was the motive of the President for calling the attention of Congress so repeatedly to the charter? Was it the design to make it a political question? If so, surely the Bank was at liberty to seek the arena in which the question must be debated. Were the President's views to obtain a decision of Congress against the charter, six years before it would expire? If so, surely, there was no impropriety in the Bank in submitting the question to Congress, in a form that could not be evaded, only four years before the expiration of the charter. The reasons which could render it proper and expedient for the President, on the part of the nation, to obtain an early decision upon this momentous subject, were equally operative upon the Bank, when acting for itself and for the country.

Charges had been raised against the propriety of the conduct of the Bank, into which the moment, when it asked a renewal of its charter, was the proper one for inquiry. A

Committee of Investigation, clothed with ample powers, was appointed; which, after a very full examination, divided in opinion; and three reports were made of their proceedings—one by a majority, another by a minority, of the Committee, and a third by an individual member, Mr. Adams. The effect of these proceedings is sufficiently apparent, in the passage of a bill, from the Senate, rechartering the Bank, by a vote of 107 to 85, in the House of Representatives. This bill, as we have seen, was rejected by the President upon the ground of the unconstitutionality and inexpediency of *its* provisions, but not on the ground, that Congress could not, constitutionally, charter a Bank of the United States.

Although the floodgates of party violence had been opened upon the Bank, in its corporate capacity, and upon its president and directors, individually, and all its acts had been grossly misrepresented by the members of the party in Congress, by its thousand presses, and by its orators in the primary meetings of the people, General Jackson, with self-respect, and respect for his station, had, hitherto, refrained from committing himself upon any definite charge of misconduct against the institution. But, the contest, which he had provoked, had but given triumph to the Bank. So far as the voice of the nation could be legitimately known, it was in favour of the Bank. Some more direct measure of hostility became necessary, and as vague charges of unconstitutionality and mismanagement had not rendered the people adverse to the institution, it was boldly and rashly resolved, by the administration, to create doubts of its insolvency. In his message to Congress of the 3d of December, 1832, after the arrangement made by the Bank, in relation to the payment of the three per cents, (which we shall have occasion to consider hereafter) the President observes,

“Such measures as are within the reach of the Secretary of the Treasury have been taken, to enable him to judge, whether the public deposits in that institution may be regarded as entirely safe. But, as his limited power may prove inadequate to this object, I recommend the subject to the attention of Congress, under the firm belief, that it is worthy of their serious investigation. An inquiry into the transactions of that institution, embracing the branches, as well as the principal Bank, seems called for, by the credit which is given throughout the country to many serious charges, impeaching its character, and which, if true, may justly excite the apprehension that it is no longer a safe depository of the money of the people.”

And the Secretary of the Treasury, Mr. M'Lane, (*it is necessary now, from the frequent changes in this office, to give the name of the officer, to avoid confusion*) by a paragraph, in his annual report, which he can never cease to regret whilst he continues to live, gave colour to this accusation of insolvency.

"It is apparent," he says, "however, that the apprehensions arising out of the arrangements," relative to the three per cents, "not less than the great amount of the Bank's transactions, especially, in its western branches, together with other matters connected with its dealings, which have occupied the attention of one branch of the legislature since the last annual report from this department, have tended to disturb the public confidence in the management of the institution; and these, taken in connection with the necessary arrangements in anticipation of finally closing its business, have suggested an inquiry into the security of the Bank as the depository of the public funds."

Supposing that there were grounds for these doubts, prudence, and an ordinary and honest regard for the rights and reputation of others, should have restrained their publication to the world, until actual inquiry had confirmed them. Had a responsible individual in private life thus attacked the commercial existence of an established house, whose credit was unimpeachable, the merchants upon change would have withered the calumniator with their abiding scorn, whilst the courts of justice would have taught him discretion, at the cost of half his substance. And are the laws of morality less obligatory on the functionaries of the nation? Granting it to have been possible, that these doubts did exist in the minds of the President and Secretary, it is certain, that they had instituted inquiry, and that a few hours delay would have brought to them the result of the investigation. What was the condition of the Bank at the moment these official communications were signed, according to the report of the agent? "The liabilities of the Bank amounted to \$37,296,950 20, and the fund to meet them to \$79,593,870 97, showing an excess of \$42,296,920 77"!!! Strong as the Bank is, its stock could not stand this shock unimpaired. It fell six per cent in the market; the public treasury and private fortunes suffering this diminution, by the wanton enmity of the executive officers. What other bank in the world could have withstood such an assault, with so little injury? If in England or France, such a blow had been stricken by the government, against the National Bank, it would have gone down like the unarmed peasant before the glaive of the mailed warrior. But, Congress upon this, as upon all previous occasions, did not fail to do justice to the Bank; and we could not frame a more severe reproof of the calumny against her, than the vote of the House, 109 to 46, declaring "that the government deposits may, in the opinion of the House, be safely continued in the Bank of the United States."

Whatever may have been the professed object of the administration, when it suggested the insolvency of the Bank, it is now certain, that it was to obtain immediate possession of the deposits. Had the audacity of the Executive been, then, wound up to the pitch it has since attained, it would not have required

the opinion of Congress to establish the contingency, on which, alone, the Secretary of the Treasury would be justified in removing the treasure of the nation from the custody of the Bank. The vote, therefore, was an utter discomfiture, and we may not be surprised, knowing the ardent temperament of the individual, that the President should declare, "that unless the Bank was broken down, it would break us down; that if the last Congress had remained a week longer in session, two-thirds would have been secured for the Bank by corrupt means, and that the like result might be apprehended at the next Congress." The country, however, thank heaven! is saved from the stigma of shame, for her representatives, by the circumstances under which this additional calumny was uttered.

It is not to be doubted, that the same policy which induced the President to conceal his opinions on the constitutionality of a National Bank, deterred him, for a season, from removing the public treasure from the Bank of the United States into depositories under his own control. The assurance of his re-election was the motive in both cases; and that no longer operating, he resolved to remove the deposits under any colourable pretence, which the imagination might suggest. All parties had, until this time, admitted, that the power of the Secretary over the deposits could be exercised, only, in two cases; a danger of loss, or a non-performance of the engagements of the Bank with the government. A higher ground was now assumed, which overlooked all considerations of contract, all legislative provision for the security of the revenues, and gave to the Secretary the absolute possession of the funds, whenever in *his opinion the "general interest and convenience of the people required it."* This resolution had been adopted at the moment that the determination of Congress against the measure was known. With a hardihood, of which modern times has no parallel, in any civilized government, the President opposed his will to that of the representatives of the people. Truly has it been said, repeatedly, upon the floor of Congress, that such a stretch of absolute power in England or France, would have cost the monarch his head. Happily, in this country, the people have other, and more effectual, modes of redressing their wrongs.

It is well known to the country, that from the time of Washington, the heads of the executive departments, that is, of the departments of State, Treasury, War and Navy, with the Attorney-General, and latterly, the Postmaster-General, form a cabinet council, whose members the President consults, either singly or together; having the benefit of their wisdom and information to guide his course. By the constitution, he may require their opinion in writing, and so uniform has been the

practice of advising with them, that, although the President is under no legal or constitutional obligation to consult them, an opinion has become general, that they form, and they are frequently called, his constitutional advisers; and the case was always deemed an extraordinary one, in which the opinion of a majority did not prevail. Their situations rendered them responsible to their country; and their influence was, therefore, the safest which could be exercised over the chief magistrate. General Jackson, it is said, with truth, which is apparent from the evidence we are about to adduce, has subjected himself to the influence of advisers of another and less responsible class; who, from their residence in the palace, have been denominated the "Kitchen Cabinet." The term, though not the most respectable that might be selected, is euphonious and appropriate enough, and being universally recognized, we must use it to distinguish this irresponsible cabal from the "Cabinet" proper.

In this secret council have the most important measures of the President originated. Its members, for purposes, apparently, purely of a party and selfish nature, have formed and steadily pursued, a plan for obtaining possession of the political and fiscal power of the country; and, as we are told, by one who was of the cabinet proper, govern it through the instrumentality of the President's passions and prejudices. The members of the cabinet proper are occasionally and formally consulted; but they are content, it seems, with the honours and emoluments of office, whilst, in the estimation of the country, its most important duties are performed by "irresponsible persons, who possess the confidence, if not the place, properly belonging to them." The historian will not fail to contrast the humility of their minds with their official elevation.

The existence of this hidden cabinet, the nature of its influence, and its direct agency in violating the laws, are established by the piquant disclosures of Mr. Secretary Duane. This gentleman, who had adhered to the President through good report and evil report, and what is more to his faithfulness as a partisan, through his own good opinion and evil opinion of the chief magistrate, consented, reluctantly, at the earnest and overpowering instances of the President, to fill the place of Secretary of the Treasury, vacated by the translation of Mr. M<sup>r</sup> Lane, his personal, and in this case, his efficient friend, to the department of State. The following is his account of his induction to his official duties under the guidance of an influence, as he justly says, unknown to the Constitution.

" . . . . . My commission bore the date of May 29, 1833, and on the 30th I reached Washington. After waiting upon the President, on the next day, I went to the treasury department, and took the oath of office on

the 1st of June. On the evening of that day, Mr. Reuben M. Whitney called upon me at my lodgings, at the desire, as he said, of the President, to make known to me what had been done, and what was contemplated, in relation to the United States Bank. He stated, that the President had concluded to take upon himself the responsibility of directing the secretary of the treasury to remove the public deposits from that bank, and to transfer them to state banks; that he had asked the members of the cabinet to give him their opinions on the subject; that the President had said, "Mr. Taney and Mr. Barry had come out like men for the removal;" that Mr. M'Lane had given a long opinion against it; that Mr. Cass was supposed to be against it, but had given no written opinion; and that Mr. Woodbury\* had given an opinion which was "yes" and "no;" that the President would make the act his own by addressing a paper or order to the secretary of the treasury; that Mr. Amos Kendall, who was high in the President's confidence, was now preparing that paper; that there had been delay owing to the affair at Alexandria; but, no doubt, the President would soon speak to me on the subject; that the paper referred to, would be put forth as the Proclamation had been, and would be made a rallying point; that he (Mr. Whitney) had, at the desire of the President, drawn up a memoir or exposition, showing that the measure might be safely adopted, and that the state banks would be fully adequate to all the purposes of government. He then read the exposition to me, and as I desired to understand matters so important and so singularly presented, I asked him to leave the paper with me, which he accordingly did. He also read to me divers letters from individuals connected with state banks. The drift of his further observations was to satisfy me that the executive arm alone could be relied on to prevent a renewal of the United States Bank charter.

"The communication thus made to me created surprise and mortification. I was surprised at the position of affairs which it revealed, and mortified at the low estimate which had been formed of the independence of my character. I listened, however, respectfully, to one who gave such evidence of the confidence reposed in him, and awaited the explanation which he intimated the President would give.

"Soon after this interview I took occasion to express my mortification at my position, to the member of the cabinet who had represented the President in asking me to accept office.

"On the next evening (Sunday) Mr. Whitney again called on me, in company with a stranger, whom he introduced as Mr. Amos Kendall, a gentleman in the President's confidence, who would give me any further explanations that I might desire, as to what was meditated in relation to the United States Bank, and who then called on me because he was about to proceed forthwith to Baltimore. I did not invite nor check communication. Very little was said, and perhaps because I could not wholly conceal my mortification at an attempt, apparently made with the sanction of the President, to reduce me to a mere cypher in the administration.

"The next morning, June 3d, I waited upon the President, and, as I had been apprized by Mr. Whitney would be the case, he soon introduced the subject of the Bank. I stated that Mr. Whitney had made known to me what had been done, and what was intended, and had intimated that his communication was made at the President's desire. The President replied, in a tone of dissatisfaction, that it was *true he had conferred with Mr. Whitney, and obtained information from him as to the Bank*, but that he did not make him his confidant, nor had he told him to call on me. I enumerated the representations which Mr. Whitney had made, *and their*

\* It is due to this gentleman to state, that I subsequently learned, he was opposed to a removal prior to July, 1834, and was for only a gradual change afterwards.

*correctness was admitted.* I said, I feared that I should not be able to see the subject in the light in which the President viewed it; to which he remarked, that he liked frankness, that my predecessor and himself had sometimes differed in opinion, but it had made no difference in feeling, and should not in my case; that the matter under consideration was of vast consequence to the country; *that unless the bank was broken down, it would break us down; that if the last Congress had remained a week longer in session, two-thirds would have been secured for the Bank by corrupt means; and that the like result might be apprehended at the next Congress;* that such a state bank agency must be put in operation before the meeting of Congress, as would show that the United States Bank was not necessary, and thus some members would have no excuse for voting for it. My suggestions as to an inquiry by Congress, as in December, 1832, or a recourse to the judiciary, the President repelled, saying it would be idle to rely upon either; referring, as to the judiciary, to decisions already made, as indications of what would be the effect of an appeal to them in future. After mentioning, that he would speak to me again, before he departed for the eastward, he said he meant to take the *opinions* of the members of the cabinet with him, but would send them to me from New York, together with his *views*, and would expect me, on his return, to give him my sentiments frankly and fully.

"The President left Washington on the 6th of June. During his absence further circumstances came to my knowledge, which induced me to believe, that the removal of the deposits was not advocated with any view to public utility, but urged to accomplish selfish, if not factious purposes. I sought no intercourse with those, who, I felt satisfied, had an undue influence over the President, at least in relation to the grave questions connected with the removal of the deposits. Whenever any of them called on me, there was no hesitation in urging me to accord in the proposed measure. It was contended that the removal of the deposits would be made a rallying point at the opening of Congress, or a flag up for the new members. Whenever I urged a recourse, in the first instance, to Congress, or the judiciary, such a step was scouted, and delay represented as hazardous.

"I had heard rumours of the existence of an influence at Washington, unknown to the constitution. The conviction, that such an influence existed, at least in relation to the matters then pressed upon me, was irresistible. I knew that four of the six members of the cabinet, before I became a member of it, had been opposed to any present action in relation to the deposits; and I also knew that four of the six members of the existing cabinet entertained the same views. I felt satisfied, not only that the President was not in the hands of his constitutional advisers, but that their advice was successfully resisted by persons, whose views I considered at variance with the public interest, and the President's fame.

"Such were my impressions, when, on the 1st of July, I received a letter from the President, dated "Boston, June 26th, 1833," together with his *views*, and the *opinions* of four of the members of the cabinet, voluminous papers, in the examination of which I was engaged when the President unexpectedly returned to Washington, on the 4th of July.

"In the *views* given by the President, he expressed his opinion, that the secretary of the treasury would be wisely exercising the discretion conferred upon him by law, by directing the deposits to be made in the state banks, from and after the 15th of September, if arrangements to be made with them should be then completed.

"In his letter, he stated that the only difficulty he for some time had, was as to the time when the change should commence; that he thought the time should be from the 1st to the 15th of September; that an agent should be sent to consult with state banks upon the practicability of an arrange-



ment such as the President then proceeded to detail; but that he did not contemplate a removal of funds deposited, unless when wanted for public purposes. The letter closed with this emphatic assurance:—

“In making to you, my dear sir, this frank and explicit avowal of my opinions and feelings, it is not my intention to interfere with the independent exercise of the discretion committed to you by law over the subject. I have thought it however due to you, under the circumstances, to place before you, with this restriction, my sentiments upon the subject; to the end that you may, on my responsibility, allow them to enter into your decision upon the subject, and into any future exposition of it, so far as you may deem it proper.”

“Prior to the reception of these communications, I had felt embarrassment, not only in relation to the general subject, but as to constitutional and legal questions. I was in doubt, as to the view which the President would take of the 16th section of the law, chartering the United States Bank, which gave the discretion, as to the deposits, to the secretary of the treasury. When, however, I read the above passage in his letter, my anxiety was, in a great measure, if not wholly, removed. If it meant any thing, I concluded that the President now confirmed, what the law had already declared, that the secretary of the treasury had the exclusive right to exercise that discretion independently of the President; and that in thus writing to me, he had pledged himself not to interfere beyond the expression of his own opinions, and the employment of argument to have an influence upon mine. Reflecting, however, upon the means that might be used to induce the President to disregard this pledge, I considered it my duty to comply strictly with his directions, *to give him my sentiments frankly and fully.*”

We cannot be surprised that the sensibility of Mr. Duane was excited “*at the low estimate which had been formed of the independance of his character,*” but we are not a little astonished, that the complacency of the other dissident members of the cabinet proper, should have been undisturbed, whilst measures most injurious to the country, which they had condemned, were thus prosecuted. In other countries where implicit submission to the behests of the Executive power, to which, time, long descent, and all the impressive circumstances of feudality have given high, though not just, claims to respect, such humble acquiescence would not have been seen, or would have been doomed to ineffable contempt. The elder Pitt, whose energetic mind was ruled by the patriot’s heart, threw up the seals when his honest counsel and warning voice were disregarded; and in the past year, we have seen, in France, distinguished ministers resign their offices, even when a *legislative* body refused to give effect to their measures. Can there be stronger evidence of the corruption of the party, than this sacrifice, which men of fair, and, in private life, of estimable character, make of their judgment and duty upon the altar of ambition or avarice? The secretary of the treasury, though inexperienced in office, was not wanting either in the firmness or intelligence which the occasion and his place required. Believing, as he did, that the President really thought the pros-

tration of the United States Bank would be another victory of which he might be proud, *and that he was stimulated to consider any means justifiable to attain that end*, he resolved to interpose between him and those who were impelling him in his rash career. He was, especially, anxious to disabuse him as to the legislature and the judiciary. He resolutely refused to direct the deposits to be made in the State banks, urging: 1, that the measure was extreme and arbitrary: 2, that it was unauthorized by law: and, 3, that it was inexpedient.

I. It was extreme and arbitrary, because,

1. The charter is the law of the land; a contract, that cannot be dissolved or altered, without mutual consent, or forfeited, without inquiry. The public deposits are a benefit to the Bank, for which it has paid a consideration, and their continuance is a part of the contract.

2. The last Congress had acted upon the complaints of the Bank; and the next Congress might follow the example of the last. The House of Representatives, by a vote of 109 to 46, decided that the Bank was a safe place of deposit, and one of the last acts of Congress authorized the Secretary of the Treasury to lend a million of dollars to the Bank without security; and nothing had occurred to warrant him to treat these evidences of confidence with contempt, or to refuse to await the interference of the next Congress. If a body with power to send for persons and papers was unable to come to a decision unfavourable to the Bank, or even to express a disbelief of its safety, the Secretary could not, without such inquiry or power to inquire, first, do what Congress would not do, and then, refer to the reasons of the President as a justification. Any proceeding, now, especially in the absence of adequate reasons, would seem to arise from an apprehension that the representatives of the people are incompetent or corruptible; and that the people, themselves, are incapable of preserving the institutions of their country, in the event of the general depravity of their agents.

II. The measure was unauthorized. If the Secretary were to cease to deposit the public money in the Bank of the United States, it would be his duty to direct its deposit to the credit of the treasurer in some safe place. Did it become the Secretary to judge of the solidity of an institution by hearsay? If he took that responsibility, had he a right to go farther? The plan suggested by the President proposed a contract with divers banks, according to which certain service was to be rendered by one party, for the privilege of trading upon the money of the other. Has the Secretary authority to create a sort of charter? In any way, or for any time, to bind the United States? Have the local banks any right to bind themselves? If they

have, what is the security, and who is to judge of it? Has the Secretary any right to contract that certain banks may contract with other banks, unknown to him? Has he the right, or is it discreet, to leave to any agent the right to decide, in the course of two months, upon the condition of all the banks that may be necessary for the operations of government? If there be no law granting powers needful, in doubtful cases, can the Secretary discreetly take them on his own responsibility? Beside the summary power to take away, has he the legislative power to authorize a disposition of the public money? Could a section of the charter, obviously meant for extreme cases only, authorize the Secretary, in the absence of necessity, to take the public money from a Bank over which there is a controul, and distribute it among institutions over which no controul exists? On the exercise of the power conferred by Congress upon the Secretary, he is enjoined to give reasons immediately to them; obviously showing that Congress considered themselves, alone, competent to judge of the *necessity* of a removal, from one agent, and the *propriety* of the substitute. The proposition of the President is avowed to be an *experiment*. Has the Secretary the right to make experiments upon such important matters? If an experiment must be made, is it not courteous to Congress, of whom the *President considers the Secretary, in this case, the agent*, to await their instruction? Have not the constitutional holders of the public purse the only means which can be safely used for making such trials?

III. The measure is inexpedient. If Congress should interrupt the experiment, and it should fail, as the Secretary thinks it would, is he then to make another? Time will be necessary to test the project; and the President desires, that the trial may be made, so as to meet the dissolution of the United States Bank. This rests on the presumption, that Congress will not interfere; whereas the Secretary believes, that the operations will have scarcely been commenced, ere the apparatus will be demolished. With such a probability, will solvent banks engage in the project? Will they guarantee the acts of banks in the remote parts of the Union? Would it be prudent to ally the country with banks willing to make such a common cause? Will not the avarice, the ignorance, or the imprudence of, particularly, remote, local banks, tempt them so to extend their loans, and use the public money, as to disable them from returning it, when required, or compel them to ruin their debtors by recalling it?

Suppose, that in the proposed measure, the faith of the country would not be violated; that contempt to the last and the next Congress would not be evinced; that power to contract with State banks exists; and that it would not be unwise to make the

contract; still the question presents itself, What would be the effect upon society? Would the operations of the Government, or of the commercial world, be facilitated? Would confidence between man and man be promoted? Would the facility to stand a shock, in the event of a war in Europe, for instance, be given to the local banks? Mr. Duane adds:

"These questions were placed by the predecessor of the Secretary in a point of view which he thinks cannot be overlooked by a chief magistrate anxious to protect the mass of the community from embarrassment. From want of experience, or information, the Secretary may not anticipate evil so extensive as that apprehended by his predecessor; but his fears render him unwilling to put the match to a train, the end of which he has not the sagacity to discern.

"Even if he doubted whether the United States Bank could meet every demand of Government, as made upon it, he would hesitate whether it would not be his duty to forbear, rather than increase the evil, by abridging the power of the Bank to surmount its difficulties. So that, in the absence of all doubt of the kind, he would be at a loss for an excuse, were he to produce, by an act on his part, the very mischief that is apprehended. Credit, like female fame, is of such a peculiar nature, that its blossoms may be blighted even by the breath of inquiry. Much more trivial changes than that proposed by the President, have produced great commercial convulsions."

"The struggle to be made is not to see which can do the other the most harm, the Government or the Bank. The Government has but one duty to execute—to inform the people and their representatives of the apprehended danger. It is not called upon to maim the Bank, lest the Bank should master the country. In any attempt to maim, the agents of the Bank would be those most likely to escape; the wound would be felt in the cottage of the farmer, rather than in the palace of the banker."

"..... If the suggestion of the President be sound, that the United States Bank dare not operate oppressively, because the State banks, having Government deposits, might run upon the branches, then, there is a check, at all times, in the hands of the Government; and the Bank, during its legal existence, will be careful not to do or omit what might warrant a total removal of the deposits."

"..... The United States Bank is represented by some of the local banks as an engine so powerful, as to be an object of universal alarm; and, at the next moment, so utterly feeble, that by the simple operation of a treasury order, the entire branches may be broken up, one after the other, and the paper flung upon them in masses, which they will not be prepared to redeem! Which of these is the true picture? If a treasury order have such talismanic influence, can there be a better pledge for the safety of the public deposits? But, if it has no such power, is it discreet to commence the war? In all such calculations, as those referred to, the flinging back masses of bank paper, and breaking up the branches are items, that seems to have caused no compassion for the ultimate sufferers. It appears to have been forgotten, that a large portion of the good and pure people of the land would be ruined."

It will be seen, by those who have read the letters of the ex-Secretary, that we have selected from, and condensed his remarks, but have not given all that he said to the President to divert him from the immoral and impolitic war in which he had so frantically engaged. The whole of the Secretary's reasons,

on this head, do honour alike to his principles and his sagacity. We see that the President has not pursued his course, unwarned of its consequences; and that the barbarous system of the war, including the run upon the branches, subsequently attempted at Charleston, was deliberately meditated.

The reasons of the Secretary for refusing to withhold the deposits from the Bank, were communicated to the President of the United States on the 12th July. He displayed, in several interviews, strong marks of dissatisfaction with his "refractory subordinate;" but, at length, asserted, that he wanted inquiry only; and to the observation of the Secretary, that his letter of June 26th indicated the purpose of an actual removal by the 15th September, he replied, certainly not with the honesty and frankness which have so falsely been attributed to him, "that the banks might not agree to the only plan he thought safe, that of mutual guarantee; that information ought to be obtained, even for the use of Congress; that he conceived the Secretary ought to co-operate in collecting it; that he was desirous that Mr. Kendall should make inquiries; and that they might remain uncommitted until after a consideration of the questions that were connected with a change of the depository."

Under these views, the Secretary consented to prepare instructions for the agent; stating, the approaching dissolution of the United States Bank; his power, prior to that period, if there were adequate cause, to withhold the deposits from it, and the desire of the President to ascertain, whether a substitute might not be procured in the state banks; directing the agent to select a designated number of such banks in certain districts, which should be empowered to appoint all the banks, at other points, in which the public money should be deposited, subject to the approbation of the Secretary; who reserved the right to discontinue the deposits in any bank when he should think proper. The terms proposed for an arrangement with the banks were, that they should make monthly or more frequent returns of their condition; report, weekly, the public deposits, and submit their books and transactions to examination by the Secretary or his agent when required: that the contract of the Government should be only with the primary banks, they being responsible for the safety of the deposits wherever made, and for making payments, without charge to the Government, at all places directed by the Secretary, rendering every service lawfully required from the United States Bank, and paying the expense of any agent the secretary should appoint to examine into their affairs. The agent was also instructed;—to inquire, whether the charters of such banks as were disposed to this arrangement would warrant it; whether, if it should be made, prior to the 4th of March, 1836, the Bank of the United States might have power and disposition to embarrass or interrupt it;

and in such case, what would be the probable effects upon the banks and the community: and to obtain, from the selected banks, information to enable the Government to judge of their condition, at the time of arrangement, and that full publicity should be given to the proceedings of the agent with them.

In concluding these instructions the Secretary observed:

"It becomes my duty to myself, in order to guard against expectations, on the part of the banks, that may not be realized, or misapprehension elsewhere, distinctly to say, that, my performance of the present act of duty as an executive agent, is not to be understood as an indication of any intention on my part, under existing circumstances, to exercise the power vested in me by law. Whether such an emergency may not arise, as may warrant the exercise of that power, it is unnecessary now to anticipate, it is sufficient to observe that, in my opinion, none such exists at present."

With a design to immediate operations, these instructions are not consistent with the views previously communicated by the Secretary to the President; but the former justified them, as useful, to obtain information which would undeceive the President, demonstrate the impracticability of his plan of financial agency, and be serviceable in any event. The qualification appended to them was, indeed, a protection from injury; for, it was little probable, that any respectable bank would enter into an arrangement, under a declaration that there existed no intention of carrying it into effect.

The effect of this qualification was at once perceived, and objected to, by the President, who, quitting the ground of "*inquiry only*," on which he had amused the Secretary, now declared, (letter of July 22d, 1833):

"The great object to be obtained by the inquiry, is to ascertain whether the state banks will agree to become the agents of the Government, on the terms proposed, for the safe keeping and transmission of the public moneys. If they will, the ground taken by the President, should circumstances remain as they now are, is, that it will be then expedient and just to resort to them as a substitute for the Bank of the United States as a fiscal agent." "Previously to inquiry, however, (the President continued), you declare that nothing has yet occurred to render necessary the movement anticipated by it; and thus leave me to infer, that should the inquiry establish the competency of the state banks to perform the agency proposed to them, you will not feel yourself at liberty to carry into effect the decision, transferring the public deposits to them, which the President, on his advisement with his cabinet, may make. Please inform me whether I am correct in supposing that this is your determination. If I am, it will *then be my duty, in frankness and candour, to suggest the course which will be necessary on my part.*"

This intelligible threat of dismissal from office, the Secretary considered as a palpable violation of the President's assurance, "that it was not his intention to interfere with the independent exercise of the discretion committed to the Secretary of the Treasury, by law, over the subject;" and he was inclined, pe-

remptorily, to adhere to the last paragraph of his instructions. But, as he says, the President still admitted in his letter, that, "all matters connected with the substitution of another fiscal agent," were to be "fully considered; and knowing that the instructions contemplated the President's bank plan alone, and the collection of information as to the effect of the removal of the deposits upon the banks and society; and as he could not, with propriety, declare, that he would not, at a future period, act, because it might become his duty, he consented to give up the offensive paragraph; and after reiterating his opinions, promised, that when the moment for decision, after inquiry and discussion, should arrive, he would concur with the President, or retire.

The promise of the Secretary, it appears, was considered by the President as removing every obstacle to his course. The instructions were, unhesitatingly, altered in many essential particulars; the direction to collect information was stricken out, and the agent empowered to propose or accept new plans. Thus modified, the instructions were signed by the Secretary; flattering himself, "that the President would be undeceived, and that the time of the meeting of Congress would be so closely approximated, ere a suitable inquiry could be made, as to render any action by the President altogether *indelicate* and *improper*." He signed them, he assures us, not with a view to retain a post, which had no longer any attraction for him, not to thwart the President in his legitimate course, not to mar a salutary measure, but to prevent the execution of the scheme which, he believed, would be detrimental to the country and to the President himself. The propriety of the sequence, however, will be apparent, probably, to those, only, who may believe that he who fires the train is no agent in projecting the missile of destruction. But even Mr. Duane, with the opportunities which he now had of knowing the President, could not conceive, that he would so far disregard the dictates of delicacy and propriety as to withhold the deposits against the expressed sense of the legislature; notwithstanding, such an intention was distinctly avowed at his first official interview on the 3d June, with the President, and also in his letter of 22d July. Yet Mr. Duane seems, at this time, or soon after, to have attained a clear conception of the true nature of the service required of him, as he assures us that it "*was not to substitute one fiscal agent for another*, but to pervert a power reserved by law, for the public protection, into a weapon to punish the legitimate fiscal agent, at such a time, and in such a manner, as to evade legislative and judicial action."

The result of these measures is given by the Secretary:

"The instructions, thus offered, were on the 23d of July sent to the agent, who soon after proceeded on his mission. He returned early in Septem-

ber, and on the 9th of that month his report was submitted to the President. The plan of bank agency, deemed by the President the only safe one, had been almost unanimously rejected by the state banks. The materials from which the condition of the state banks was to be ascertained, were very imperfectly furnished. No inquiry, beyond that which resulted in the agent's report and correspondence, was, to my knowledge, made. Nor was there any discussion, in my presence, or otherwise, to my knowledge, as to the agent's report and correspondence, or any plan of state bank agency. If any member of the administration understood what was to be the system of future fiscal operations, I was not that person, although I, attentively, read all that was submitted. Yet it was into this chaos I was required precipitately to plunge the fiscal operations of the country, at a moment when they were conducted by the legitimate agent with the utmost simplicity, safety and despatch."

When it was known, early in September, that the Secretary persisted in his refusal to remove the deposits, some members of the cabinet appeared to desire a middle course. He was asked whether he would fix a day on which he would remove the deposits, after the meeting of Congress, in case that body should not act upon the subject. This is not the least extraordinary feature in this most extraordinary history. It supposed a resolution, in the Executive, to control the public funds, not only without the authority of Congress, but even against the repeated and continued expression of the public will; and supposed, also, a claim to power, quite as broad as the Executive has since set up in his presumptuous protest to the Senate. The Secretary refused to fix a day, but consented to remove the deposits in case Congress desired it; and again stated his readiness to retire, as soon as the President should express his preference for that course.

In the meantime, while a grand attack upon the Bank was in preparation, pursuant to a predetermined plan, reasons for justifying the assault were, *covertly*, sought through the *instrumentality* of the directors of the institution, appointed by the President; who were instructed by that officer, privately, to make inquisition into the proceedings of the Bank, and whose report, replete with error and perversion, we shall have occasion hereafter to notice.

A cabinet council, destined to be famous in history, was holden on the 18th September, when the President read to the assembled members an exposition of his views, which he delivered to the Secretary of the Treasury for consideration. Four of the members, it is understood, dissented. Of the doctrines and allegations contained in this document, it is unnecessary now to speak at large, since they have been wholly adopted by the successor of Mr. Duane, and reported by him to Congress as *his* reasons for the removal of the deposits. Some of the closing paragraphs, however, of the address must find a place here. They contain the President's exposition of his



right to control the Secretary of the Treasury, and his peremptory appointment of a day for the removal of the deposits.

"Viewing it (the change) as a question of transcendent importance, both in the principles and consequences it involves, the President could not, in justice to the responsibility he owes to the country, refrain from pressing upon the Secretary of the Treasury his view of the considerations which impel to immediate action. Upon him has been devolved by the Constitution and the suffrages of the American people, the duty of superintending the operations of the Executive departments of the Government, and seeing that the laws are faithfully executed. In the performance of this high trust, it is his undoubted right to express to those whom the laws and his choice have made his associates in the administration of the Government, his opinion of their duties under circumstances as they arise. It is this right which he now exercises. *Far be it from him to expect or require, that any member of the cabinet should, at his request, order or dictation, do any act which he believes unlawful, or in his conscience condemns.* From them, and from his fellow-citizens, in general, he desires, only, that aid and support which their reason approves and their conscience sanctions.

"*The President again repeats, that he begs his cabinet to consider the proposed measure as his own, in the support of which he shall require no one of them to make a sacrifice of opinion or principle.* Its responsibility has been assumed, after the most mature deliberation and reflection, as necessary to preserve the morals of the people, the freedom of the press, and the purity of the elective franchise, without which, all will unite in saying, that the blood and treasure expended by our forefathers, in the establishment of our happy system of government, will have been vain and fruitless. Under these convictions, he feels that a measure so important to the American people cannot be commenced too soon; and he therefore names the first day of October next, as a period proper for the change of the deposits, or sooner, provided the necessary arrangements with the state banks can be made."

It is really difficult to understand what the President apprehended, when he so repeatedly asserted that he did not mean to coerce the action of any one of his cabinet. These asseverations refer, solely, to the Secretary of the Treasury. The President recognizes the power of that officer as *unqualified*, as absolute, over the deposits; he claims only to be viceroy over him. We can comprehend, that an absolute prince does not coerce obedience to his command when he does not make the prison, the cord, or the axe, the alternative. But, surely, he is not tolerant, when he expends the whole of his power to produce conformity. Nor can the President be supposed to respect the opinions of a cabinet minister, when expulsion, the greatest punishment he can inflict, is the consequence of disagreement with him.

The decision of the Secretary was, hastily and indecorously, pressed upon the 19th, and though he craved delay until the 21st, that he might prepare a defensive paper, the determination to remove the deposits was officially published on the 20th; thus offering to him a gross indignity as an officer and a man.

On the 21st, he addressed a "brief emphatic letter" to the President, refusing to carry his directions into effect, or voluntarily to leave the post which the law had placed under his charge; conceiving that the latter resolution was warranted by the affront which had been put upon him. He was formally and rudely dismissed on the 23d of September, by a note from the President, saying, "I feel constrained to notify you that your further services as Secretary of the Treasury are no longer required." Mr. Taney, who had sustained the views of the President, as his successor, carried them into effect. Mr. Duane has earned, with his contemporaries and posterity, the reputation of a man of talent, firm in the performance of his duty, incorruptible by ambition, and what is more rare, unseduced by the wiles and claims of party,—an enviable niche in the historic temple.

Thus, was perpetrated in the most vindictive spirit, the most naked and reckless act of power which our annals have recorded. The sense of Congress scorned,—its members shamefully defamed,—the solemn contract with the bank annulled,—the public treasury torn from the legal depository,—the national currency unsettled, and bankruptcy and ruin widely spread over the land.

II. The lawfulness of the power claimed by the President over the deposits has become a question of grave consideration in Congress; and its exercise has called forth, from the Senate, a rebuke, which is second only to a conviction on impeachment. This power is claimed by the President on the following grounds.

1. That the Executive power is vested in him by the Constitution. 2. That it is his sworn duty to take care that the laws be faithfully executed. 3. That it is his right and duty to nominate, and by and with the advice and consent of the Senate, appoint, all officers of the United States, whose appointments are not, in the Constitution, otherwise provided for. From these premises, he infers, "that the whole Executive power being vested in him, who is responsible for its exercise, it is a necessary consequence, that he should have a right to employ agents of his own choice, to aid him in the performance of his functions, and to discharge them, when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original Executive power, is left unchecked by the Constitution, in relation to all Executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible." The power of removal he maintains, by the contemporaneous construction of the Constitution, and the uniform practice under it.

The President further contends, "that the Treasury Department is on the same footing as the other departments; the Secretary, being constitutionally appointable and removable by him,

is an Executive officer, the mere instrument of the Chief Magistrate in the execution of the laws, subject, like all other heads of departments, to his supervision and control: That the pretension, that the Secretary is an officer of Congress, is not warranted by anything in the Constitution; no joint power of appointment is given to the two houses of Congress; nor is there any accountability to them, as one body; but, as soon as any office is created by law, of whatever name or character, the appointment of the officer devolves by the Constitution upon the President, with the advice and consent of the Senate, except in cases, of which this is none: That this pretension is discountenanced by an incident which occurred at the time of the organization of the Treasury Department, distinctly evincing the unanimous concurrence of the first Congress, in the principle, that the Treasury Department is wholly Executive in its character and responsibility; a motion to strike out the provision of the bill making it the duty of the Secretary 'to digest and report plans for the improvement and management of the revenue, and for the support of public credit,' on the ground that it would give the Executive Department too much influence in Congress, was opposed, not because the Secretary was the officer of Congress, which, if admitted, would have been conclusive, but for reasons which conceded his Executive character throughout.

"That the custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the Executive Department, in this, and all other governments. In accordance with this principle, every species of property belonging to the United States, (with some exceptions unimportant to this issue,) is in charge of officers appointed by the President, whether it be lands, buildings, merchandise, provisions, clothing, arms or munitions of war."

"That public money is but a species of public property. It cannot be brought into the Treasury, except by law; but when obtained, its custody always has been, and must be, unless the Constitution be changed, intrusted to the Executive Department. *No officer can be created by Congress to take charge of it, whose appointment would not, by the Constitution, devolve on the President, and who would not be responsible to him for the faithful performance of his duties.* The Legislative power may undoubtedly bind him and the President by law, prescribing where particular portions of the public money may be kept, and for what reason it may be removed; as it may direct the supplies for the army or navy to be kept in particular stores; and it will be the duty of the President to see that the law be faithfully executed—*yet will the custody remain in the Executive Department.* Were Congress to assume the power to appoint officers, independently of the President, to take charge of the public property in the arsenals, &c., it would be a palpable usurpation of Executive power, subversive of the form as well as of the fundamental principles of the government. And no difference exists, between public property in the form of munitions of war, or pecuniary treasure. *Congress cannot, therefore, take from the Executive Department the*

*custody of the public property or money, without an assumption of Executive power, and subversion of the first principles of the Constitution.*

"That Congress has never imperatively directed the public moneys to be kept in any particular place. A Treasurer created, subordinate to the Secretary and through him to the President, is required to give bond, safely to keep, and faithfully to disburse, the public moneys without direction as to the manner or place in which they should be kept. By the original and continued practice of the Government, the Secretary, under the supervision of the President, designated the places of custody, and specially directed all transfers of the public funds; and although portions were first placed in the State banks, and then in the former bank of the United States, and on its dissolution, again transferred to the State banks, no legislation was deemed necessary by Congress, and all the operations were originated and perfected by Executive authority.

That, "The Act of 1816, directing the public deposits to be made in the Bank of the United States, unless the Secretary of the Treasury should otherwise order, was but the continuation of the pre-existing powers of the Secretary to direct where the deposits should be made, with the superadded obligation of giving reasons to Congress for making them elsewhere. The provision did not, in any way, alter the relation between the Secretary and the President, as the responsible head of the Executive Department, or release the latter from his constitutional obligation, 'to take care that the laws be faithfully executed.' It was the duty of the Secretary to direct the deposits to be made elsewhere than in that Bank, *whenever sufficient reasons existed for making the exchange.* If he neglected or refused to act, he would neglect or refuse to execute the law, which the duty of the President required him to see faithfully executed; and the obligation in such case is the stronger, as the neglect is in his presence, and the remedy at hand. A contemporaneous construction of the Act of 1816, shows that it was not designed to change the relations between the President and Secretary. The Secretary applied for and obtained the President's sanction and authority to the original transfer of the deposits to the present Bank of the United States. With the like sanction and authority, the transfers from the Branches of the United States Bank, to State banks at Chillicothe, Cincinnati, and Louisville, were made in 1819. And these acts were known to, and approved by all the departments of government, and by Congress and the people; and they show, that, upon all important questions appertaining to his department, whether relating to the public deposits or other matters, it was the constant practice of the Secretary of the Treasury to obtain for his acts, the approval and sanction of the Presidents."

"Thus, was it settled by the Constitution, the laws, and the whole practice of the Government, that the entire Executive power is vested in the President of the United States; that as incident to that power, the right of appointing and removing those officers who are to aid him in the execution of the laws, with such restrictions only as the constitution prescribes, is vested in the President: that the Secretary of the Treasury is one of those officers: that the custody of the public property and money is an Executive function, which, in relation to the money, has always been exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties, he is subject to the supervision and control of the President, and in all important measures having relation to them, consults the Chief Magistrate, and obtains his approval and sanction; that the law establishing the Bank did not, as it could not, change the relation between the President and the Secretary—did not release the former from his obligation to see the law faithfully executed, nor the latter from the President's supervision and control; that afterwards, and before, the Secretary did in fact consult, and obtain the sanction of, the President, to transfers and removals

of the public deposits; and that all departments of the Government, and the nation itself, approved or acquiesced in these acts and principles, as in strict conformity with our constitution and laws."

"Circumstances, in the opinion of the President, rendered it the duty of the Secretary to place the public moneys in other depositaries than the Bank. The Secretary did not concur in that opinion, and declined to give the necessary direction; and the President deemed it his imperative duty, by the exertion of every power confided to him by the constitution and laws to check the career of the Bank, even in the alternative of dismissing the head of one of the departments."

These reasons of the President, which we believe contain all the positions strictly relative to the subject, are abstracted from the *protest* against the resolutions of the Senate, delivered to that body on the 17th April, 1834. The broad ground of exclusive right in the Executive department to the custody of the public money, had not, before that time, been made; and however much Congress and the people had been prepared for Executive assumptions of power, this, from the universal astonishment and indignation which it instantly provoked, had been wholly unexpected.

Such, indeed, was the force of that indignation, that even the usually unyielding temper of the President was compelled to bow before it. An attempt was, therefore, made within four days after the communication of the Protest, to qualify it by a supplement, alleging, that several passages of the former might be misunderstood; and that it was not the intention of the President to deny the power and right of the legislative department, to provide by law for the custody, safe keeping, and disposition of the public money and property of the United States.

"I admit," he continued, "without reserve, as *I have before done*, (see last paragraph page 40) the constitutional power of the legislature to provide by law, the place or places in which the public money or other property is to be deposited, and to make such regulations concerning its custody, removal, or disposition, as they may think proper to exact. Nor do I claim, for the Executive, any right to the possession or disposition of the public property or treasure, or any authority to interfere with the same, *except when such possession or disposition or authority is given by law*; nor do I claim the right, in any manner, to supervise or interfere, with the person entrusted with such property or treasure, unless he be an officer whose appointment, under the constitution and laws, is devolved upon the President alone, or in conjunction with the Senate, and for whose conduct he is constitutionally responsible."

It is obvious that the extent of the claim of the President *over the public property and money, as an Executive function*, is not at all narrowed by this explanation. For *all* officers of the United States must be appointed by the President in conjunction with the Senate, by the President alone, or by the courts of law, or the heads of departments; in the last case, the subordinates are

appointed by the superior officers, and by and through them are subject to the President; and he does claim, even in the supplement, by unequivocal implication, the right to "supervise or interfere with the person entrusted with the public property or treasure, if he be an officer whose appointment is devolved upon him alone, or in conjunction with the Senate."

Far less pretensions, than are set forth, in the cabinet communication, of the 18th September, 1833, had called for the special consideration of the Senate. On the 26th December, 1833, Mr. Clay offered, with another, the following, resolution:

*Resolved*, That, by dismissing the late Secretary of the Treasury, because he would not, contrary to his sense of his own duty, remove the money of the United States in deposit with the Bank of the United States and its branches, in conformity with the President's opinion; and by appointing his successor to effect such removal, which has been done, the President has assumed the exercise of a power over the Treasury of the United States, not granted to him by the Constitution and laws, and dangerous to the liberties of the people.

This resolution, after a protracted debate, was, on the 28th March, modified by the mover, and passed by the votes of twenty-six senators out of forty-six, who were present and voted, in the following words :

"*Resolved*, That, the President in the late Executive proceedings, in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both."

Thus, the right claimed by the Executive over the public funds is not only denied, but its exercise has been severely rebuked. The most distinguished statesmen, the Adams, the Websters, the Clays, the Binneys, the M'Duffies, the Southards, the Calhouns, the Claytons, and many others of scarce less notoriety and estimation have raised their voices, with all the force of reason and eloquence, against a measure in which they perceive the inception of the ruin of political and civil liberty—a measure which tends inevitably to unite in one hand, the purse and the sword, and, by this amalgamation of all power, to make the nation subject to one man. Since the foundation of the government, since the birth of the nation in 1776, no subject of deeper interest has agitated her councils; none has developed more intellectual power; none excited a richer flow of eloquence.

The importance of this question is thus emphatically and spiritedly urged by Mr. Clay, on opening its discussion in the Senate, on the 26th December last :

"I agree, sir, and I am very happy whenever I can agree, with the President, as to the immense importance of these questions. He says, in the paper which I hold in my hand, that he looks upon the pending question as involving higher considerations than the 'mere transfer of a sum of money from one bank to another. Its decision may affect the character of our Ge-

vernment for ages to come.' And, with him, I view it as 'of transcendent importance, both in the principles and the consequences it involves.' It is a question of all time, for posterity as well as for us—of constitutional government or monarchy—of liberty or slavery. As I regard it, I hold the Bank as nothing, as perfectly insignificant, faithful as it has been in the performance of all its duties. I hold a sound currency as nothing, essential as it is to the prosperity of every branch of business, and to all conditions of society, and efficient as the agency of the Bank has been in providing the country with a currency as sound as ever existed, and unsurpassed by any in Christendom. I consider even the public faith, sacred and inviolable as it ever should be, as comparatively nothing. All these questions are merged in the greater and mightier question of the constitutional distribution of the powers of the Government, as affected by the recent Executive innovation. The real inquiry is, shall all the barriers which have been erected by the caution and wisdom of our ancestors, for the preservation of civil liberty, be prostrated and trodden under foot, and the sword and the purse be at once united in the hands of one man? Shall the power of Congress over the Treasury of the United States, hitherto never contested, be wrested from its possession, and be henceforward wielded by the Chief Magistrate? Entertaining these views of the magnitude of the question before us, I shall not, at least to-day, examine the reasons which the President has assigned for his act. If he has no power to perform it, no reasons, however cogent, can justify the deed. None can sanctify an illegal or unconstitutional act."

And thus Mr. M'Duffie, with that richness of illustration and forceful vehemence which characterise him, exhibits the nature of the Executive assumptions :

"Sir, I have read history with some attention, and for the last two or three years my mind has been irresistibly carried, by the downward tendency and ominous signs of the times, to those portions of the history of nations which trace their progress in the rapid descent from the enjoyment of free institutions to the endurance of despotic forms of government. And after surveying the whole field which history presents, covered with monumental beacons, inscribed with lessons of wisdom—if nations would ever learn wisdom from experience, I venture to make the assertion, that there is no instance in the history of any civilized government of modern times in which the progress of usurpation has been more rapid, bold, ingenious and successful, than it has been in these United States for the last fifteen months. Sir, the last of the Tarquins was hurled from the throne of his ancestors; the first of the Cæsars was slain in the Roman Senate; Charles the First of England, and Louis the Sixteenth of France, were severally condemned and executed; all under the charge, with different specifications, of having subverted the fundamental laws, and conspired to usurp the supreme power of the State. And although the sentence by which these enemies of human liberty were doomed to expiate their delinquencies—some of them in their own blood—has been solemnly ratified by the impartial judgment of posterity, yet, sir, strange as it may sound to *loyal* ears, it is my deliberate conviction that the proofs by which the charge of usurpation was established in these memorable instances were not more full and conclusive than the proofs which can be now produced to establish the same charge against a republican President, who came into power under the most solemn pledges to restrain the usurping tendencies of this Government, to reclaim the lost rights of the sovereign States of this Union, and to bring back the institutions of his country to the primitive standard of republican economy, simplicity, and purity. God forbid, sir, that I should insinuate, or be the means of inducing any one to suppose, that the

President of the United States should encounter the fate of those whose pernicious example he has but too closely followed!"

With these views of the nature of the struggle in which the country is involved, we shall consider more fully the President's pretensions to the custody of the funds and consequent power to remove the Secretary of the Treasury.

"What power," says Mr. Clay, "has the President over the public Treasury? Is it in the Bank charter? That gives him but two clearly defined powers: one to appoint, with the concurrence of the Senate, and to remove the Government directors; and the other, to order a *scire facias* when the Charter shall be violated by the Bank. There is no other power conferred on him by it.

"In the law the Secretary of the Treasury alone is designated. The President is not, by the remotest allusion, referred to. And, to put the matter beyond all controversy, whenever the Secretary gives an order or direction for the removal, he is to report his reasons—to whom? To the President? No! directly to Congress. Nor is the Bank itself required to report its periodical condition to the President, but to the Secretary of the Treasury or to Congress, through the organ of a committee. The whole scheme of the Charter seems to have been cautiously framed with the deliberate purpose of excluding all intervention of the President, except in the two cases which have been specified. And this power, given exclusively to the Secretary, and these relations maintained between him and Congress, are in strict conformity with the act of September, 1789, creating and establishing the Treasury Department. Congress reserved to itself the control over that department. It refused to make it an Executive department. Its whole structure manifests cautious jealousy and experienced wisdom. The constitution had ordained that no money should be drawn from the Treasury but in consequence of appropriations made by law. It remained for Congress to provide *how* it should be drawn. And that duty is performed by the act constituting the Treasury Department. According to that act, the Secretary of the Treasury is to prepare and sign, the Comptroller to countersign, the Register to record, and, finally, the Treasurer to pay, a warrant, issued, and *only issued*, in virtue of a prior act of appropriation. Each is referred to the law as the guide of his duty. Each acts on his own separate responsibility. Each is a check upon every other. And all are placed under the control of Congress. The Secretary is to report to Congress, and to each branch of Congress. The great principle of division of duty, and of control and responsibility—that principle which lies at the bottom of all free government—that principle, without which there can be no free government, is upheld throughout. So, in the Bank Charter, Congress did not choose to refer the reasons of the Secretary to the President; but, whenever he changed the deposits, the Secretary was commanded to report his reasons directly to Congress, that they might weigh, judge, and pronounce upon their validity."

Mr. Binney, in his admirably argumentative review of the reasons of Secretary Taney, thus meets the claim of the Executive, not only as it regards the power of the President over the funds, but, also, that of the Secretary himself.

"The act of the 2d September, 1789, for the establishment of the Treasury Department, pursues a strikingly different course from acts establishing other departments. It drops from the title the denomination of *Executive* given to the other departments—not by accident, but by design, as the word



'Executive' was contained in the title of the bill when reported by committee, (see Journal 1st & 2d Cong. vol. 1, p. 57,) and, what is more material, it enacts that it shall be the duty of the Secretary 'to digest and prepare plans for the management and improvement of the revenue, and for the support of the public credit; to prepare and report estimates of the public revenue and the public expenditures; to superintend the collection of the public revenue; to decide on the forms of keeping and stating accounts and making returns; and to grant, under the limitations herein established, or to be hereafter provided, all warrants for moneys to be issued from the Treasury, in pursuance of appropriations by law; to execute such services relative to the sale of the lands belonging to the United States as may be by law required of him; to make report and give information to either branch of the Legislature, in person or in writing, as he may be required, respecting all matters referred to him by the Senate or House of Representatives, or which shall appertain to his office; and generally to perform all such services relative to the finances as he shall be directed to perform.' The name of the President is not mentioned in the act, except in the 7th section, which charges the assistant with the duties of the office, in case the Secretary is removed by the President; and the bond of the Treasurer, prescribed by the 4th section, is not to be approved by the President, but by the Secretary of the Treasury and Comptroller.

"It is not meant to say, sir, that the Secretary of the Treasury performs, or is bound to perform, no duties of an Executive department, or that, in the performance of any such duties, he is not subject to direction by the President; but it is meant to say that the Treasury Department is not, in its control of the Treasury, an Executive department, in the constitutional sense; and that the direction which is to govern the Secretary, is left, by the terms of the act, to be settled according to the character of the function to be exercised. The Secretary is not the head of an Executive department, in the performance of acts which concern the custody and security of the public moneys in the Treasury. His department is not, in this respect, a Presidential department. To have placed the custody of the public Treasury within the Executive department, would have been a constitutional incongruity, a solecism, to say nothing of the enormous mischiefs to result from placing the power of the sword and the purse in the same hand. It would have marred the harmony and simplicity of the whole scheme of the constitution, by leaving to Congress the duty of paying the debts and providing for the common defence and welfare, while the money collected for these objects was not under their control, but in the hands of a different department. It would make, and the adoption of the doctrine does make, the power of appropriation entirely futile, because the public money is, by force of it, as little under the control of Congress before appropriation as it is afterwards; and it gives the control of the public treasure, so far as the position and distribution of it can give such a control, to a department that can wield the whole force of the revenue, against the legislative department and the people.

"The principle which, it seems to me, sir, must govern this question, and that which I take the liberty of stating to the House, as the only satisfactory one that has occurred to me, is this—that the *right of direction*, where it exists at all, results from official connexion, subordination, and responsibility, and not from tenure of office. If the duty belongs to the Executive department, the right of direction is in the head of that department, who is responsible for the performance of all its duties. If it belongs to the Judicial department, the right is in the heads of that department—the courts. If it belongs to the Legislative department, the right of direction is in Congress. The direction in these several cases, by force of this principle, is in perfect harmony with the system. It proceeds from official responsibility

in the principal, and official duty in the subordinate officer to follow what the principal directs. The officer is bound to obey the principal, because the principal is responsible for him in the very matter directed, and his direction is a justification to the officer who obeys him. Any other principle must produce perpetual conflict and confusion. The attempt to make a test of the removing power, fails as soon as you apply it. The marshals are, as to matters of judicial cognizance, directed by the courts, to whom they are responsible, and for the proper direction of whom the courts are responsible; yet the courts do not appoint, and cannot remove, the marshals.

"Sir, the question cannot well arise as to acts plainly prescribed. No one can assert an authority in the President to direct an act to be done, which the laws, or the courts in conformity with the laws, direct not to be done; nor the contrary. It arises only in regard to discretionary acts. But the same principle regulates duties of every description, and especially duties which are committed by the law to the discretion of an officer. For abuse of that discretion, if answerable to anything but the law, he is answerable to the head of that department to which the particular duty appertains, and by that department he may be directed. The marshal is, in judicial matters, answerable to the court; in legislative matters, to Congress; and in executive matters, to the President. The Secretary of the Treasury, as it regards the Treasury, is answerable to Congress. To give the President the right of directing or controlling his discretion in such matters, is to make the Secretary responsible to the President, who is not responsible for him. This, sir, is the position upon which the doctrine I maintain may be safely placed. The President is not responsible for the duties which do not appertain to his department. His direction is no justification to the officer to whom the law assigns the duty to be performed, or to whom it has given the discretion to perform the act or not; he is, therefore, not bound to obey him, nor excusable for obeying him. Any other principle will give to the President the right of directing and controlling the discretion of every officer in the land except the Judges.

"The answers given to these suggestions, sir, are not satisfactory. It is said, the President has the undoubted right to remove, and may, in this way, obtain the direction. Certainly the President may thus obtain the direction of men who prefer their office to their duty; but if he removes, to obtain a *power* of direction where he has not the *right*, he violates his own duty. The power of removal ought not to be so exercised.

"It is further said, that all powers are legislative, judicial, or executive. The Secretary's power is neither legislative nor judicial, and therefore it must be executive, and belong to the Executive department. This is a confusion of language. The *departments* of our Government are legislative, judicial, and executive; and what does not belong to the first two, belongs to the third. But there are executive acts, that is to say, acts to be executed in the Judicial and Legislative departments, as well as in the Executive department. An act to be executed in the Judicial department does not belong to the Executive department. The question of the right of direction regards not merely the act to be done, but the relation in which it is to be done.

"It is again said, that the constitutional power of the President to demand the opinion, in writing, of the officers of the Executive departments, touching the duties of their respective offices, shows the dependency of these officers upon the President, and his responsibility for them. This may or may not be so; but it leaves the question, what is an Executive department, in this sense, precisely where it found it.

"Again: it is said that the President is bound to take care that the laws are faithfully executed. This proves too much for the argument, as, if it

proves anything, it proves that the President may direct the judges as well as other officers, during pleasure. The supervisory power cannot interfere with the exercise of discretion in the Secretary, when the law gives it to him, because the faithful execution of the law consists in the exercise of his discretion; and whoever disturbs that exercise, violates the law instead of executing it. *It is a power that does not enlarge the President's authority, but rather declares the result of other powers before given to him in the constitution. It is corrective, to put aside, where his power is adequate, both dishonesty and incompetency; but it is not directory nor transcendental, to bring all the officers and operations of the nation under his sway.*

"Finally, it is said, that the power of removal is fairly applied to discharge an officer who does not do his duty; and how can this be, if the President cannot decide what is his duty, and, consequently, direct its performance? Sir, the President is responsible for the use and abuse of his power. If he exercises it fairly, to remove an officer who does not do his duty, it is well. But if the discharge is colourably for this, but really to enforce a direction which he had no right to give, he gains the power he ought not to have, by the abuse of the power he has."

Upon a review of the acts of Congress, organizing the Executive departments, no unprejudiced mind, we think, can fail to arrive at the conclusion, that it was designed to organize the Treasury Department upon principles of responsibility, different from those adopted in forming the other departments. It is obvious that an additional and special responsibility is created from the officers of the Treasury department to Congress. But the general supervisory power of the President, growing out of the power, rightfully, or otherwise, to appoint and to remove the officer for nonfeasance or malfeasance, has not been taken away. It seems to us, that the being whose life and death are at the will of another, is not more dependant than the officer, who may be made and destroyed by a word from the mouth of a superior, is dependant upon and responsible to that superior. The remedy for the evil is in rendering the officer accountable to the people. But in the view given by Mr. Binney, the responsibility to Congress and the President are not incompatible—the power of the one being *corrective*; that of the other being *directory and transcendental*. We will not say, however, that the case is free from all difficulty. If we grant to the President a *directorial* power in relation to it, the case becomes one, not of *usurpation*, but of abuse, of power. The justification of the course of the President, then, depends upon the right of the Secretary and the expediency of removing the depositories. If these be not established, the attempt of the President to coerce the Secretary to their removal was an *abuse* of his power, perverting it to a purpose for which it was never designed. Upon this hypothesis, the views of Mr. Calhoun, similar to those of Mr. Polk of the House of Representatives, may be correct. They are entitled to the most respectful attention, as coming from a mind eminently endowed, governed by unquestionable sincerity and purity of purpose, and long devoted to the science of government.

"I have no doubt that the President removed the former Secretary, and placed the present in his place, expressly with a view to the removal of the deposites. I am equally clear, under all the circumstances of the case, that the President's conduct is wholly indefensible; and, among other objections, I fear he had in view, in the removal, an object eminently dangerous and unconstitutional—to give an advantage to his veto, never intended by the Constitution—a power intended as a shield, to protect the Executive against the encroachment of the Legislative department—to maintain the *present state of things* against dangerous or hasty innovation, but which, I fear, is, in this case, intended as a sword, to defend the usurpation of the Executive. I say I fear, for although the circumstance of this case leads to a just apprehension that such is the intention, I will not permit myself to assert that such is the fact—that so lawless and unconstitutional an object is contemplated by the President, till his act shall compel me to believe to the contrary. But while I thus severely condemn the conduct of the President in removing the former Secretary and appointing the present, I must say, that in my opinion, it is a case of the *abuse* and not of the *usurpation* of power. I cannot doubt that the President has, under the Constitution, the right of removal from office: nor can I doubt that the power of removal, wherever it exists, does, from necessity, involve the power of general supervision; nor can I doubt that it might be constitutionally exercised in reference to the deposites. Reverse the present case—suppose the late Secretary, instead of being against, had been in favour of the removal, and that the President, instead of for, had been against it, deeming the removal not only inexpedient, but, under circumstances, illegal; would any man doubt, that under such circumstances, he had a right to remove his Secretary, if it were the only means of preventing the removal of the deposites? Nay, would it not be his indispensable duty to have removed him? and, had he not, would not he have been universally and justly held responsible?"

Such being the views taken in Congress upon the pretensions of the President to control his appointees, and the disposition of the public treasure even before the boundless claim of the protest and its supplement, it will be readily supposed, that the latter was not spared, in the remarks of Senators upon those unprecedented and presumptuous messages. The resolutions in which the Senatorial debates upon them resulted, were another castigation of arrogant pretensions, which *constitutional heroes*, men impenetrable to everything which should regulate and control their will, alone, would invoke.

By a vote of 27 to 16, a majority, more than double that on the former reproof, the Senate resolved:

"That the protest communicated to the Senate, on the 17th, (April,) by the President of the United States, asserts powers belonging to the President which are inconsistent with the just authority of the two houses of Congress, and inconsistent with the Constitution of the United States."

It is not, perhaps, immediately necessary to this branch of our subject, to advert to the remaining resolutions adopted on this occasion by the Senate; yet, as we may not, hereafter, find it convenient to notice them, we may observe now, that, the right claimed and exercised by the President to make a formal protest

against votes and proceedings of the Senate, declaring them to be illegal and unconstitutional, and requesting the Senate to enter such proceedings on its journals was repudiated; and his right to send a protest to the Senate against any of its proceedings, denied; and *the* protest declared a breach of the privileges of the Senate, and refused a place on their journals.

The communication made by the President on the 18th of September, 1833, was not designed solely for his Cabinet. In truth, the Cabinet, the measure of removal having been previously resolved on, had little to do with it. The members were not convoked for consultation. The last paragraph of the communication, fixing a day for the removal, shows, that it was a foregone conclusion in the mind of the President. He desired no discussion. For him all reasons were useless before the

“*Sic volo, sic jubeo, stet pro ratione voluntas.*”

The question concerned the peculiar official duties of no more than one member, the Secretary of the Treasury; who, it was now found, had been mistakenly selected for pliancy of will, and whose zealous party devotion had been, falsely, conceived to imply an abjectness of spirit, that would suffer, unresistingly, unrepiningly, any degradation. Had the object of the communication been, the conviction of the Cabinet, or the Secretary alone, it would have slept, after the performance of its office of explaining to them or him, the views of the President. But, it was designed for an ulterior, if not altogether a different, purpose. It was the manifesto of the President against the Bank, in which all the reasons that he and his coadjutors could gather, sound or unsound, true or false, against the institution, were congregated. It was the defence of the war, furnished for the use of the *party*, before the astounded and affrighted country; and was, for that purpose, published in all the party journals, and most industriously circulated among the people.

This paper was before the directors of the Bank, on the 24th of September, and a counter manifesto was prepared, in which, the Board have ably refuted the charges made against them. The allegations of the President against the Bank, and all his avowed causes of the war have been reported by Mr. Taney, as *his* reasons for the removal of the deposits;—the defence of the bank has been adopted and enlarged by the whig speakers in Congress. We proceed, therefore, to the consideration of the reasons and their refutation, omitting, for want of space, so much of the President's message of December, 1833, as relates to the Bank, for which this would be the appropriate place.

III. The report of the Secretary of the Treasury is divisible into

two parts: The first, comprising the principles upon which he bases his authority, and the second, The facts by which he endeavours to justify its exercise.

The principles or primary propositions are:

1. That, by his removal of the deposits, whether with or without cause, the Bank of the United States was divested of all right thereto, and the nation discharged from the contract, without any violation of faith. Thus, he says,

“The act incorporating the Bank is to be regarded as a contract between the United States of the one part, and the stockholders of the other; and by the *plain terms* of the contract, the stockholders have agreed, that the power reserved to the Secretary over the deposits, shall not be restricted to any particular contingencies, but be *absolute and unconditional, as far as their interests are involved in the removal*. The order, therefore, of the Secretary, directing the public money to be deposited elsewhere, can in no event be regarded as a violation of the contract with the stockholders, nor impair any right secured to them by charter. The Treasury department being entrusted with the administration of the finances of the country, it was always the duty of the Secretary, in the absence of any legislative provision on the subject, to take care that the public money was deposited in safe keeping, in the hands of faithful agents and in convenient places, to be applied, according to the wants of the government. The law incorporating the Bank has reserved to him, in its full extent, the power he before possessed. It does not confer upon him a new power, but reserves to him his former authority, without any new limitation. The obligation to assign the reasons for his direction to deposite the money of the United States elsewhere, cannot be considered as a restriction of the power, because the right of the Secretary to designate the place of deposite was always necessary, subject to the control of Congress. And as the Secretary of the Treasury presides over one of the executive departments of the government, and his power over this subject forms a part of the executive duties of his office, the manner in which it is exercised, must be subject to the supervision of the officer to whom the Constitution has confided the *whole* of the executive power, and has required to take care that the laws be faithfully executed.”

2. By the second position, the Secretary assumes, that whilst his power over the subject is absolute, that of Congress is divested;—the Legislature have alienated it to him; thus,

“The faith of the United States is pledged, (by the 16th section of the Bank Act,) that the public money shall be deposited in this bank, ‘unless the Secretary of the Treasury shall otherwise order and direct.’ And as this agreement has been entered into by Congress, in behalf of the United States, the place of the deposite could not be changed by a legislative act, without disregarding a pledge which the Legislature has given; and the money of the United States, must, therefore, continue to be deposited in the Bank until the last hour of its existence, unless it shall be otherwise ordered by the authority mentioned in the charter. *The power over the place of deposite for the public money would seem, properly, to belong to the Legislative department of the government, and it is difficult to imagine, why the authority to withdraw it from this bank, was confided exclusively to the Executive.* But the terms of the charter appear to be too plain, to admit of question. And although Congress should be satisfied that the public money was not safe in the care of the Bank, or should be convinced that the interests of the people of the United States imperiously demanded the removal, yet the passage

of a law directing it to be done, would be a breach of the agreements, into which they have entered."

3. The third position is, that, the rightful exercise of this power of the Secretary is not, even in point of responsibility to Congress, dependent upon the safety of the deposits, or on the fidelity of the Bank, in its conduct to the government; but that it is his right and duty to remove them, if the removal tend, in any degree, to the interest and convenience of the public.

4. And the fourth and last proposition is, that as the propriety of removing the deposits was evident, it was consequently *his duty* to select the places of future deposite.

The manner in which this duty has been filled, is thus described; the advantages predicted from it, will be considered hereafter:

"It became necessary that arrangements should be made with the new depositaries of the public money, which would not only render it safe, but would at the same time secure to the government, and to the community at large, the conveniences and facilities, that were intended to be obtained by incorporating the Bank of the United States. In order to secure the safety of the public money, each of them is required, and has agreed, to give security, whenever the amount of the deposits shall exceed the half of the amount of the capital, actually paid in, and this department has reserved to itself the right to demand security whenever it may think it advisable, although the amount on deposit may not be equal to the sum above stated. The banks selected have also, severally, engaged to transmit money to any point, at which it may be required, by the directions of this department, for the public service, and to perform all the services to the government, which were heretofore rendered by the Bank of the United States, and by agreement, among themselves, to honour each other's notes and drafts, they are providing a general currency, *at least as sound as that of the Bank of the United States, and will afford facilities to commerce, and in the business of domestic exchange, quite equal to any which the community heretofore enjoyed.*"

† The facts urged by the Secretary in justification of his exercise of power, the influence of which, is subsidiary to, and dependent upon, the foregoing principles, and which he emphatically styles his reasons, are,

1. That the Charter of the Bank will expire by the existing law in 1836, and will not be renewed.

2. The unwarrantable reduction by the Bank of its discounts, and consequent depression of commerce.

3. Mismanagement of the Bank and improper application of its funds.

4. That the Bank, though a fiscal agent of the government, has sacrificed to its own interest that of its principal.

5. That the Bank has used its means to obtain political power and thereby to assure the renewal of its charter.

Having, thus, given a synopsis of the principles and reasons assigned by the Secretary of the Treasury for the removal of the deposits, we shall proceed to consider them more fully, in

tracing their stormy progress through the two Houses of Congress, giving the reader the benefit of the light which has been shed upon them in their discussion. But that we may, uninterruptedly, avail ourselves of the debates, we will first narrate the disposition of these "Reasons" in either Chamber, together with some other matters relating to our subject.

On the 3d December, 1833, the "reasons" were communicated to the House of Representatives, and on the succeeding day, to the Senate. An effort was made by the friends of the administration in both chambers, to divert attention from the Secretary's defence, to an examination of the conduct of the Bank, on the Secretary's charges; and thus, to put the Bank, and not the Secretary, on trial. This *ruse* was easily defeated in the Senate, but cost some trouble in the House, where it was met by those expedients which the minority can always successfully employ against a proscriptive majority. In the House, the report was first referred to the Committee of the Whole on the State of the Union; but, with the view, as afterwards became undeniable, of avoiding judgment, upon the "reasons," and to substitute an inquiry into the conduct of the Bank, for new "reasons" justificatory of the Secretary's acts, that reference was recalled on the 17th, and a motion made to refer the Report to the Committee of Ways and Means; to which Mr. M'Duffie proposed to add, "with instruction to report a joint resolution, providing that the public revenue, hereafter collected, shall be deposited in the Bank of the United States, in compliance with the public faith pledged by the charter of the said Bank." This addition, subjected the reasons to immediate and full discussion, as if referred to the Committee of the Whole, and gave the early opportunity of enlightening the country, which those who would preserve its good faith desired.

A wish, almost universal, was awakened in the members, to debate the subject; and, consequently, it occupied the attention of the house almost exclusively for two months. In the interim, Mr. Jones, of Georgia, proposed as a substitute for Mr. M'Duffie's instruction, "To inquire into the expediency of depositing the revenue, hereafter collected, in all the State Banks in the different States, where the same is collected, in proportion to their respective capitals paid in; and to prescribe the terms on which the same shall be deposited; and to report by bill or otherwise." On February 18, the debate was closed, by the call of the previous question, which cut off the amendment of Messrs. M'Duffie and Jones; and the Secretary's reasons were referred, by a vote of 130 to 98, to the Committee of Ways and Means.

On the 4th March the majority of the Committee made report, to which four resolutions were appended. 1. That the Bank of the United States ought not to be rechartered; 2. That the public deposits ought not to be restored to it; 3. That the state.



banks ought to be continued as the places of deposit of the public money, and that it is expedient for Congress to make further provision by law, prescribing the mode of selection, the securities to be taken, and the manner and terms on which they are to be employed ; and 4th,

“That for the purpose of ascertaining as far as practicable, the cause of the commercial embarrassment and distress complained of by numerous citizens of the United States, in sundry memorials which have been presented to Congress, at the present session, and of inquiring whether the charter of the Bank of the United States has been violated, and also what corruptions and abuses have existed in its management: whether it has used its corporate power or money to control the press, to interfere in politics, or influence elections ; and whether it has had any agency, through its management or money, in producing the existing pressure ; a Select Committee be appointed to inspect the books, and examine into the proceedings of the said Bank, who shall report whether the provisions of the charter have been violated or not ; and also what abuses, corruptions, or malpractices have existed in the management of the said Bank ; and that the said Committee be authorized to send for persons and papers, and to summon and examine witnesses on oath, and to examine into the offices of said Bank and Branches ; and they are further authorized to visit the principal Bank or any of its branches, for the purpose of inspecting the books, correspondence, accounts, and other papers connected with its management or business, and that the said Committee be required to report the result of such investigation, together with the evidence they may take, at as early a day as possible.”

On the same day the minority of the Committee also made report, concluding with the following declaration :

“The minority are of the opinion, that *none* of the reasons assigned by the Secretary, in his communication to Congress, are sufficient to justify the removal of the deposits. They are also of the opinion that it is due to the Bank to return them, without regard to the sentiment of the House, upon the subject of recharter. They are further of the opinion, that the situation of the country requires immediate action by Congress, to restore public confidence and to prevent a derangement of the currency : And they express to the house their settled conviction, that these objects will not be attained, if the public deposits are left in the State banks. They think, besides, that the universal voice of the country, requires that something shall be immediately done for public relief, and that the resolutions proposed by the committee, will only aggravate the existing evils, instead of providing a remedy.”\*

The resolutions reported by the Committee were debated, almost daily ; such members as had been precluded from the discussion on the reference, by the previous question, availing themselves of the opportunity now afforded, to review the whole ground. This lengthened debate, which had been commenced by Mr. McDuffie on the 19th December, was finally closed on the 4th of April, after another address of the same gentleman, by

\* In this great controversy, names become important, as authority for facts, at least, if not for inductions. The Committee of Ways and Means consist of Messrs. Polk, Wilde, Cambreleng, Gorham, M<sup>r</sup> Kim, Binney, Loyall, M<sup>r</sup> Kinley and Hubbard. The minority was composed of Messrs. Wilde of Georgia, Gorham of Massachusetts, and Binney of Pennsylvania.

the invocation of the previous question, which was sustained by a vote of 114 against 105. Complaints have been uttered against this forcible sealing of the lips of the minority. But the time which had been given to the subject, and the ample manner in which it had been treated, take from the justice of these reproaches, and leave perhaps little cause to regret the sudden termination of the discussion, except so far as it prevented the exposition before the House of the views of Mr. John Quincy Adams.

The opinions of this gentleman, from his virtues, his services, his experience, and his intellectual qualifications, are entitled to profound respect from a grateful people. Indignities offered to him, are offered to the nation, and stain indelibly the party and the agent by whom they are perpetrated. From his representations, the truth of which none question, the decorum due to him has not been observed.

On presenting to the House the resolutions of the legislature of Massachusetts, in relation to the state of the currency and the removal of the deposits, Mr. Adams, to save time and to admit the reception of other memorials, confined himself to a few general and indispensable remarks, expressly stating, that he hoped at a suitable time, to be indulged with the opportunity of offering his views upon one of the resolutions, in which the legislature had declared, its opinion that the reasons of the Secretary for the transfer of the public funds, were insufficient to justify the measure. It was not until after three unsuccessful attempts, on three different days, and after an expostulation with the Speaker, as earnest as it was necessary, that Mr. Adams was enabled to obtain a hearing for the legislature of Massachusetts; and he was then indebted for it "to the courtesy of a member from South Carolina, who, on the FOURTH DAY of a discussion allowed by the SPEAKER under *his* administration of the rules of the House and of the *lex parlamentaria*, by the judicious admixture of which two authorities, all the proceedings of the House solve themselves into *the will of the Speaker*, was entitled to the floor, upon certain resolutions of the legislature of Virginia."

On the day of the previous question, at the instant when Mr. McDuffie resumed his seat, Mr. Adams addressed the Speaker, with the intention of delivering his opinion on the subject before the House, which was, precisely, that of the legislature of Massachusetts, upon which he had given notice of his desire to be heard. The Speaker's eye and ear were in another direction, and he gave the floor to a member from Virginia, who by agreement concerted *out of the House*, was to move the *previous question*. Fortunately for the country, Mr. Adams, thus denied a hearing before the representatives of that nation over which he had presided with distinguished honour, in discharge of his duty

to the legislature of Massachusetts and to his constituents, resorted to the press, to make public the remarks which it was his intention to address to the national council.\* Supposing the exclusion to have been undesigned, it is to be lamented, that it has the colour of premeditation; if it were intended, it will be a blot in our history.

On putting the question, it was divided, so as to take the vote, separately, on each resolution. The House determined, 1. That the Bank ought not to be rechartered, by a vote of 135 to 82; 2. That the public deposits ought not to be restored to the Bank, by a vote of 119 to 104; 3. That the State banks ought to be continued as the places of deposite, &c., by a vote of 117 to 105; and, 4. That a committee of investigation should be appointed, by a vote of 174 to 41. The following gentlemen were named on this Committee: Mr. Thomas of Maryland; Everett of Massachusetts; Muhlenburg of Pennsylvania; Mason of Virginia; Ellsworth of Connecticut; Mann of New York; and Lytle of Ohio. The party thus audaciously avoided, and have pertinaciously and successfully continued to avoid, taking the sense of the House of Representatives upon the sufficiency of the Secretary's reasons.

This disposition of the reasons of the Secretary and report of the Committee did not terminate the debate upon the subject. It was continued until the 16th May, without bounds to its excursiveness, upon a resolution of Mr. Mardis of Alabama, proposing that "the Committee of Ways and Means be instructed to inquire into the expediency of reporting a bill requiring the Secretary of the Treasury to deposit the public moneys of the United States in the State Banks; and also as to the expediency of defining by law, all contracts, hereafter to be made with the Secretary, for the safe keeping, management, and disbursement of the same," and upon amendments suggested to this resolution.

The amendments and resolutions were then withdrawn by the movers, a bill upon the same subject having been reported to the House, and referred to the Committee of the whole.

In Senate on the 26th December, Mr. Clay, on the consideration of the report of the Secretary of the Treasury on the removal of the deposits, offered and sustained, beside the resolution we have already noticed censuring the conduct of the President, another, declaring, "that the reasons assigned by the Secretary of the Treasury for the removal of the money of the United States deposited in the Bank of the United States, and its branches, communicated to Congress on the 3d day of December, 1833, are unsatisfactory and insufficient." The debate on these resolutions continued almost without intermission, until the 4th of February,

\* Introduction to Mr. Adams's printed speech.

when that relating immediately to the Secretary, was referred to the Committee on Finance; Mr. Webster, chairman, who made report thereon, on the succeeding day, in which, a review of the reasons of the Secretary closed with a recommendation to the Senate to adopt the resolution which had been referred to them. The discussion was thence protracted, until 28th March, when the resolution was adopted by a vote of 28 to 18.

On the 28th May, Mr. Clay offered two joint resolutions in Senate; the first declaring the reasons of the Secretary for the removal of the Deposites insufficient and unsatisfactory; and the second directing that the public moneys accruing on and after the 1st July, 1834, be deposited with the Bank of the United States, pursuant to the charter. The faithful party sentinel, Mr. Benton, whose great powers serve but to repel all accord of others in his measures, sought, vainly, to avert this direct blow. The first resolution was passed on the 3d June by a vote of 30 to 16, and the second, on the succeeding day, by a vote of 28 to 16. Being sent to the House of Representatives, they were, on June 13, on the motion of Mr. Polk, laid on the table, there to sleep in oblivion. Thus, again, to use a term of Mr. Lytle, the majority has *skulked* the question, of the sufficiency of Mr. Taney's reasons; and though effectually sustaining his measures, they dared not meet the responsibility of a vote justificatory of them.

Pending this long debate, in which many of the Representatives, pledged to the party, denied the distress of their constituents, the people were not idle in taking constitutional measures for their own relief. They met in primary assemblies, by hundreds, by thousands, and by tens of thousands, and in energetic petitions and remonstrances, claimed from Congress the restoration of the deposits to the United States Bank, and the re-charter of the institution. The legislatures of many States, also added their representations to like effect. Every mail, from the north, the east, and the west, came laden with these expressions of public opinion. Nor were the leaders of Jacksonism indolent in the support of their idol,—but the intoxication from the Circean cup of which their partisans had drunk was passing away; and sober reason and sad reality, were chasing the phantastic visions of “glory;” and the rolling drum no longer drew to the waving banner, blinded and devoted agents.\* Those who came to the call, had, an eager and inquiring temper, and their numbers, as reckoned upon the petitions to Congress, were but as one to eight of their adversaries. Whole states, as Connecticut, and Rhode Island which had been subjected to party thralldom, threw off the yoke, and everywhere the demonstrations of a renovated and indignant spirit became apparent.

\* From Pennsylvania the petitioners to the Senate for restoring the deposits, amount to 36,700; those against the restoration to 571!

Committees from the people, instructed in their grievances, came personally, to the seat of government, to present their views to Congress and the president. By the latter, they were, for a short season, received with tolerable courtesy : but, the undisciplined, arrogant, and irrepressible temper of the military chieftain, could not long brook the complaints and remonstrances of those who were suffering beneath his policy. His impatience and anger were displayed in rude manners and captious questions; in violent and abusive denunciations of the Bank, and reiterated assertions of its insolvency. Commanding the petitioners to seek relief at the hands of the president of the institution, he mocked their distresses, declaring, that the failures which afflicted the country, were only amongst the stock-jobbers, brokers and gamblers, whom he wished to God were all swept from the land—that he had never doubted that brokers, stock-speculators, and all who were *doing business on a borrowed capital* would suffer severely, under the effects of his measures, and that, all such people ought to break ;—concluding with vociferations “that he would never restore the deposits, would never re-charter the United States Bank, or sign a charter for any other Bank, so long as his name was Andrew Jackson.”

These undignified scenes were made known to the people ; and their effect was to arouse them, still more, from their delusion, and to make them blush for the deportment of the first official of the country. This was soon perceived by the party, and it was resolved, rather than longer to expose their chief to interviews and occasions, for which he had shown himself so unequal, to resort to a measure, alike unwise and desperate—to close the doors of the first magistrate of the nation, against the delegates of the people, charged to communicate their griefs, to remonstrate against their causes, and to enlighten and reclaim their author. For the first time, in a free country, a chief magistrate refused to listen, in person, to the voice of his constituents.

Early in the session, the President nominated to the Senate, the directors whose subserviency had furnished him with misrepresentations as a basis for criminal accusations against the bank. The Senate, in concurrence with the public sense on the conduct of these gentlemen, rejected them on the 27th February, 1834. The subject, in the mean time, with which these nominations were connected, having undergone a full and elaborate investigation, the decision could not fail to satisfy the President, that the Senate entertained decisive objections to the confirmation of these persons, and the journals showed him, that, each had been rejected by a majority of the whole Senate. Notwithstanding these facts, he with selfish tenacity of purpose, and utter disregard for the sentiments of the Senate, renominated the same persons on the 11th March. A long remonstrance against the act of the Senate, accompanied this renomination, with an intima-

tion, that if the nominees were not approved, no others would be named, and that the bank would, therefore, be without government directors.

In his message, the President disclaimed, indeed, in terms, all right to inquire into the reasons of the Senate for rejecting any nomination; yet he, distinctly, inferred, from facts and circumstances, what those reasons must have been, and controverted, at large their validity. If, as the President, justly admitted, he could not inquire into the reasons of the Senate for refusing its assent to his nominations, it is obvious that such reasons could not be, with propriety, assumed, and made subjects of comment. This inquisition and rebuke was, therefore, a new instance of overweening presumption, which, in a dignified manner, was reproved by the Committee, to whom the message was referred, and their recommendation that, the Senate do not advise and consent to the appointment of the persons thus renominated, was adopted, by a large majority.

Subsequently, the President nominated other gentlemen as directors of the Bank, who, with the exception of one, distinguished for partisan activity and devotion to the party chief, were duly approved.

The Committee appointed to investigate the affairs of the Bank, under the resolution proposed by the Committee of Ways and Means, assembled in Philadelphia on the 23d April. A Committee was appointed of seven members of the Board of Directors, of which Mr. John Sergeant was chairman, to receive the Committee of the House of Representatives, and to offer for their inspection, such books of the Bank as might *be necessary to exhibit the proceedings of the corporation according to the requirements of the charter*—and due arrangements were made for the accommodation of the investigators at the Bank.

The nomination of this Committee, the chosen and legal agents of the Bank, was viewed with apprehension and dislike by the investigators, “which soon grew into a conviction, that it had been appointed to supervise their acts, and to limit and restrain their proceedings, not according to the directions contained in the resolution of the House, but according to the will and judgment of the Board of Directors.” That will and judgment was determined, however, by the proper rules, *the requirements of the charter*. With singular inconsistency, too, the investigators complain, that, the exhibition of the books and papers had not been committed to the more appropriate agents, the president and cashier, whose duty required them to be always present at the Bank, when in the same breath, they also complain, that the president of the Bank as an *ex officio* member of the exhibiting Committee, *pre-occupied* with them, the room assigned to the investigators. In a word, these latter gentlemen appear to have

been confounded by the appearance of resolution, on the part of the Bank, whilst it yielded all that could be required from it, under the charter, to resist firmly, every effort of illegal search made with the view solely to criminate the directors.

In two investigations, previously made into the affairs of the Bank, it had submitted, without reserve, to every possible mode of inquiry ; for every possible purpose. Congress had not assumed a hostile position against it, and the directors felt full confidence in the disposition of the national legislature to do them justice, against any efforts, illegally, to impeach their characters, or arraign their conduct. At the last investigation, they were applicants for a re-charter, and they could not object to any latitude of inquiry demanded by a House of Congress favourably disposed to their wishes, provided the result of the examination should be satisfactory. Instead, therefore, of placing themselves upon their rights, they opened all their books and papers to unconditional inspection and unreserved examination. The inquiry was pushed into every matter of alleged abuse, and wherever it was supposed, the Bank was vulnerable. Nothing was spared ; nothing held back. Books and papers were submitted, and personal examinations on oath were endured, although, avowedly for the purpose of discovering matters of inculcation against the directors. The materials thus collected, were spread before Congress, and the people, even by the exertions and the expense of the Bank ; and a majority of both Houses of Congress united in the passage of a bill for re-chartering the institution.

But, a very different state of things had succeeded this triumphant vindication of the integrity of the Bank. The hostility of the administration against it had become desperate and reckless,—its insolvency was falsely proclaimed—the most beneficial condition of its contract with the nation was violated by withholding the deposits—a majority of the House of Representatives elected before the passage of the late Bank bill, were pledged to the enmity of the administration, and had declared their opinion, that the Bank ought not to be re-chartered, nor the deposits restored. To sanction this opinion, known, unquestionably, to be opposed to that of the nation, charges of the most unwarrantable designs, and the most corrupt practices were alleged against the directors, to sustain which, *per fas aut nefas*, there was but too much reason to believe the present Committee of investigation had been raised.

Whilst the bank was, in every object of legal inquiry, bound by its charter, and willing to co-operate, it was its right and its duty to resist every mode of inquisition for the crimination of the directors, more especially, as every essential matter of inculcation, now brought forward, had already been examined into,

and passed upon, by Congress. From the measures of the administration and the majority of the House of Representatives, the objects of the committee of investigation could not easily be mistaken. But those objects are exhibited, in letters of light, by the minority of that committee, men distinguished alike for sound morals and cultivated minds. "They think, that no candid person, contemplating all the circumstances of the case, from the first demonstration of a policy on the part of the Executive, hostile to the bank, down to the recent measures, in support of that policy in the House of Representatives, will deny, that its object was the overthrow of the institution, and the impeachment of its directors, before the bar of public opinion, if not before that of the judicial tribunals of the land, of gross malpractices, corruptions and frauds; and that the inquiry to be conducted by the committee, was proposed to be one of the measures to promote that end. So far from this being denied, they understand it to be, not only admitted, but claimed as a merit, on the part of the friends of the present administration of the National Government."

In what spirit could such a design be met, by honest and honourable men, conscious of their probity and of their ability to protect this valuable possession against invasion? For, it is against such, this disreputable inquisition is directed. The bank is a mere legal abstraction, incapable of virtue or crime. Its directors are the responsible agents—charged with a most cruel and perfidious design to bring universal distress upon the country for paltry and selfish ends—and for promoting these, with corrupting the conductors of the press, corrupting the people in the exercise of the elective franchise, and corrupting the members of Congress. Are they to submit to the charge without a murmur—to admit the existence of a *prima facie* case against them? Does the strong and indignant feeling that their characters are outraged, while their rights are invaded, call upon them, voluntarily to take the culprit's place and endure the ignominy of an unwarranted and vexatious inquisition? Or is it not rather the natural dictate of proud and conscious innocence to place themselves upon their rights, beneath the ægis of the law?

To ascertain those rights we must inquire what powers belong to the committee of investigation, under the charter to the bank.

By the twenty-third section of the act incorporating the bank, it is made lawful for a committee of either house of Congress, to inspect the books and to examine into the proceedings of the corporation, *and to report whether the provisions of the charter have been violated*, with a view to the trial of the violation, by a proper judicial tribunal. A committee of investigation, under this section, is authorized to visit the bank, inspect the books, examine into its proceedings, *with the view* to report, whether



the charter has been violated. This power to inspect books and papers, is given, altogether, by the charter and would not otherwise have been possessed by the House, and is to be exercised, solely, for purposes recognized by the charter.

Congress, as the grand inquest of the nation, have the power, independent, and above the charter of the bank, to inquire, by committee or otherwise, into any alleged abuse or corruption whatever; and for such purpose, to send for and examine persons, books and papers. But, the inquiry, under this power, must be conducted according to the general principles of law. A committee authorized under the provisions to inspect books, &c. for a purpose recognized by the charter, cannot use them for a purpose not so recognized.

If two committees be appointed by the House, one for charter objects, and the other for general inquiry, they cannot amalgamate or interchange their functions. So, if one committee be appointed for a two-fold purpose, it cannot use the means exclusively appropriated to one, in order to accomplish the other. The committee of investigation having the powers of a special and general committee, it is important to know what are the powers of a general committee of inquiry. It is more easy, however, to say, what those powers are not, than what they are. And the very statement of the powers which the committee have not, will be in itself sufficient to establish their exception.

Be it premised, that this general power extends to all persons, individual and corporate, and is no more applicable to the Bank of the United States than to any other bank. It is not an absolute inquisitorial power—it does not authorize a committee to prosecute a secret inquiry of indefinite character, after any, and every abuse, probable or possible—it does not extend to the right of inspecting the books granted for one purpose, alone, so as to authorize the inspection for purposes totally different—it gives no power to issue warrants of general search and compel the appearance of citizens and the production of papers, not in the proof or disproof of charges against third persons, by evidence, of which they are legal depositaries, but in order to enable the committee to discover, by such papers, whether those who bring them, are not themselves guilty of misdemeanors—to institute a general search and compel the citizens on oath to purge themselves, if innocent, and criminate themselves, if guilty, and to bring with them, their papers to be ransacked in a roving hunt for unspecified crimes. Against such enormities, the Constitution provides ample protection.

The majority of the committee assumed, that the twenty-third section of the charter gave them authority to examine into all books and proceedings of the bank without exception, and for any purpose; admitting, however, that there was a restriction on

the committee, which had reference, not to the extent of the examination, but to the character of the report. That is, that the examination might be for any purpose, although the committee were restricted to report "whether the provisions of the charter were violated or not." If this be true, it is also extraordinary that so boundless a power should be given for so limited a purpose.

With this notice of the rights of the committee we are prepared to judge of their proceedings and those of the bank.

The first object of the committee of investigation seems to have been, to obtain absolute and exclusive possession of all the books of the bank, or at least of such as they might deem necessary. To this end, they called for a list of the books, with an explanation of the purposes for which each was designed, and the names of the clerks to whose custody they were respectively committed. This was a preliminary step to a precept to be addressed to the clerks, to take possession of the books. But the object was defeated; the exhibiting committee furnishing the list, and declaring the books to be in the general custody of the board.

To this end also, the committee of investigation sought to obtain exclusive possession of a room in the banking house, offered by the directors for their accommodation during the inspection of the books; notwithstanding the exhibiting committee had expressed their intention to withdraw whenever the committee of the House desired to deliberate. But the visiting committee, declaring their proceedings confidential, until otherwise ordered, resolved that they would "conduct the investigation without the presence of any persons not required or invited to attend."

This claim of secret session was objectionable; 1st, As unparliamentary, no committee of inquiry being empowered to sit in secret, unless constituted a secret committee by express order of the house. 2d, As withdrawing the books of the bank from the custody of the directors, a power not given by charter, that reserved or granted, being only to inspect the books, whilst this was a right wholly to obstruct, and bring to a stop the ordinary proceedings of the bank; in fact to suspend the charter. A right to inspect the books no more involves a right to take possession of them, than a right to count the money in the vaults involves the right to take possession of it. It is vain to urge, that the possession of the books would not be abused; since, the very purpose for which they were requested was the greatest possible abuse—being that of a general search, to ascertain in general form, not only, whether the charter had been violated, but whether there were corruptions and abuses in its management;—

to do that, as a general committee of inquiry, which could only be done, if at all, under the special authority of the charter.

Exclusive possession of the books of the bank being thus denied in the banking house, the committee took a step still more objectionable; returning to their hotel, they sent a written request to have such books, out of the bank, at their private lodgings. This was of course declined, for the same reason as the grant of exclusive possession of the room, as well as for other causes, among which, was exposure to injury in the streets and in a public hotel. So important was it deemed, that the books should not be taken from the bank, that a special provision was requisite in the charter, to authorize the court, on the trial of a *scire facias* against the bank, to require the production of the books in court.

The propriety of the refusal of the bank, to suffer their books to leave the banking house, soon became obvious to the committee of investigation, and they determined again to repair to the banking house to inspect them. A notice of their intention to visit the bank, on the 5th May, at one o'clock, was communicated to the chairman of the exhibiting committee at his dwelling-house, when the committee was not in session, and a short time before the hour appointed. He immediately informed the chairman of the investigating committee that it would be impracticable to re-assemble the committee of directors in season to submit the books for inspection on that day, but that they would be re-assembled without unnecessary delay. Notwithstanding, the committee were thus apprized, that their visit would be without result, they persisted to make it, with, apparently, no other motive than to form an issue between them and the bank. Proceeding to the bank, they demanded, formally, certain books of the President and Cashier, who declined compliance, on the ground, that they were not in their custody, but in the custody of the committee, to whom they had been committed by the board. This was but another effort to obtain exclusive possession and control of the books.

Satisfied, at length, that the books of the institution would not be abandoned to them; and probably, convinced of the propriety of the course pursued by the Directors, the committee of investigation acquiesced in it, and without waiving their right to require the books at their lodging, they again repaired to the banking house, to the room set apart for their accommodation, where, on the 7th of May, they resolved to examine into the truth of the statement made by the Government directors to the President and Congress; and called for the inspection of the minute books of the board, the expense books and vouchers of expenses incurred.

It became, now, necessary for the Bank to take the ground

which it had, doubtless, resolved to assume, immediately after the adoption of the resolutions reported by the committee of ways and means. Adverting to the wide inquiry proposed by the committee of investigation, embracing, among other things, an extensive examination of the acts, transactions, accounts and letters of individuals, and thus instituting a kind of general search, which was the more objectionable, if it had any purpose at all, because it must be to criminate those individuals, as well as the Bank, the committee of directors declared it their duty, by all lawful means, to protect the rights and sacred confidence entrusted to their keeping; to yield nothing by consent, which could not be legally demanded from them; and, that, the inquiry which could only be rightfully extended to alleged violations of the charter should be conducted on some certain principles. They, therefore, proposed, that the committee of investigation, when calling for books and papers, for inspection, should state, specifically, in writing, the purpose; if to establish a violation of the charter, then to state, specifically, in writing, what are the charged violations, to which the evidence is supposed applicable; and that the committee of investigation should furnish a specification of all charges intended to be inquired into, and proceed with them in order as stated. These propositions were rejected by the committee.

The call, now made, for certain books of the Bank, was to enable the committee to examine into the truth of the statement supplied by the Government directors; embracing matters, that neither are, nor are alleged to be, violations of the charter; and, consequently, upon the principles already stated, the directors not being required to submit their books for inspection, they were refused; and the refusal was fully sanctioned by the board.

Other requisitions were made by the committee of investigation covering a wide range of inquiry of the most miscellaneous character; such as documents, which, in whole, or in part, had been already communicated to Congress; papers relating to matters which could not be stated without great labour of compilation and resort to sources of knowledge, not necessarily, nor officially, in the possession of the Bank—matters, with respect to which no desire of concealment, could, on any hypothesis be imputed to the Bank,—and others, involving the highest confidence of individuals, not to be divulged, except under legal compulsion, without the grossest breach of faith. These reasons, in connection with the object for which the requisitions were made, constrained the board to refuse compliance with most of them.

Two of these requisitions merit particular notice, as showing in the most conclusive manner, the spirit of the inquiry. The first required copies of all correspondence between the president of the Bank or any of its officers and members of Congress and of

*unanswered letters* received from any one of them, since the first day of July, 1832, touching the renewal of the charter of the Bank, the removal or restoration of the public deposits, or touching the business transactions of such members with the Bank. The second demanded, a detailed statement of all loans made, since the first of January, 1829, to individuals, who were then, or have been since, and now are, members of Congress, stating the amount of each loan; when made; the security; and time when given; the security now holden and amount still due, from each borrower, or person for his benefit, at the Bank, or either of the branches; and stating, also, the particulars of any such loans which have been protested, or which are now under protest, and the names of the parties to any such debts; also the names, if any, of any such persons, whose notes have been renewed after the same became due, and not protested, or renewed, with the names of individuals, parties to said renewals, whose notes were under protest at the time such renewals were made: and also whether such loans were made by the directors or otherwise, and by what authority.

There can be no difficulty in comprehending the scope of these requisitions. They express, distinctly, a charge of bribery and corruption, in which the directors of the Bank and members of Congress were parties, and from their minuteness seem to regard special individuals. Is it to be tolerated, even in the fiercest political warfare, that such crimes shall be insinuated against the most respectable and conspicuous men in the country; and that, at the sacrifice of every principle of delicacy and honour, a general and indefinite inquisition shall be made into the transactions of the representatives of the people, in hope, that chance may supply some facts to sustain the monstrous charge of corruptibility which the President has dared to make against them? The monstrosity of this proceeding is the more apparent, when it is known, that not more than four members of Congress had dealings of any character with the Bank, and that those were altogether free from suspicion. "If individuals are, on clear grounds, suspected of being thus corrupted; if the Bank, on reasonable grounds be suspected of this highest breach of privilege, let such individuals be named; the charge stated in form; the culprit brought to the bar of the house; and the guilty punished. But, let not the whole body of both houses be involved in one indiscriminate and odious, because vague and anonymous, delation." If the house, ruled by party, were not wanting in a proper sense of its own dignity, the committee would be in danger of incurring the extremity of its indignation for this gross breach of privilege.

The call for the correspondence of all members of Congress with the Bank, is wholly unwarranted by law. It has long been settled, "that to ransack private studies, in order to search for

evidence, and even without a previous charge on oath, is contrary to natural justice as well as to the liberty of the subject. To search a man's private papers, *ad libitum*, and even without accusation, is an infringement of the natural rights of mankind." It was not the least detestable of the cruel violations of justice and law which brought Sidney to the block, that he perished in consequence of a manuscript political treatise, brought to light by a general search among the papers of his cabinet. How much more, then, would the liberties of the citizen be outraged by a general warrant to compel the production of all the letters which may have been written by a class of individuals for two years, in order to a search of the same, with the view to the institution of a criminal prosecution against the writers or receivers?

Upon the same ground, may be placed the call upon the Bank for the amount of fees paid to counsel, and of the accommodations given at the Bank to editors and publishers of newspapers and periodical works. Of payments for services to the Bank, or loans to customers, the directors and the stockholders are the proper judges. These are matters with which Congress have nothing to do, and about which the committee had no right to inquire. As well might the accounts of all employees of the Bank, and of all its customers, who are not converts of Jacksonism, be subjected to investigation, on the ground that they were bribed by payment of their services and by loans, to vote against the administration. The remark is not out of place here, that counsellors and editors open to bribery, are quite as likely to be bought, by wages and accommodations from other banks, as from the Bank of the United States; and political patronage, as at present exercised, and as developed by the late investigation of the Post-Office transactions, is a source of corruption, to say the least, quite as powerful as the favour of a monied institution.

For refusing compliance with requisitions such as these, the directors of the Bank have been charged with contemning the authority of the House of Representatives. But, as authoritative form was not given to the requisitions, they, in respectfully declining compliance, cannot be legally charged with contempt. The committee of investigation were resolved, however, to take measures, if possible, to place the directors of the Bank in that predicament, that they might more effectually lay the basis of further persecutions; or failing, to subject them to the process of contempt, to make a case which might serve to abuse the public mind.

Resort was therefore had to the subpœnas furnished under the seal of the House of Representatives. They, thereby, on the 9th May, directed the marshall of the Eastern District of Pennsylvania to summon the president and thirteen directors of the Bank, to attend at their committee-room, on the next day at

12 o'clock, at noon, to testify of the matters of which the committee was authorized to inquire, and to bring with them certain books, therein named, for inspection. The parties appeared in pursuance of the writ, and delivered in writing, their answer to the requisition; stating, that, they did not produce the books of the Bank, because, they were not in the custody of either of the witnesses, but in that of the board of directors, and that, being corporators and directors they were parties to the proceedings, not bound to testify, and therefore, they, respectfully, declined so to do.

The right of the committee to issue the subpoena, as well as the mode of service, might well be questioned. Objection, however, was, momentarily and with protest, waived, on the appearance of the parties. But the requisitions were wholly inadmissible. To compel the production of the books, all the directors, or at least, the committee, in whose charge they had been temporarily placed, should have been specially summoned. And though, if the right thus to obtain the books were valid, any book might be required; yet the call for the credit books of the Bank, showing the accounts of every individual with the institution, displayed an utter disregard for the rights and feelings of third persons. The call upon the directors to testify, required them to criminate or purge themselves on oath; for the avowed object of the subpoena was to inquire "whether a criminal prosecution shall be instituted." Such a requisition is, unquestionably, unlawful. And we have already seen, that, for such a purpose the books could not be legally demanded. But, whilst the directors protested against the right of the committee to examine them, they declared, they had no knowledge, which, if a necessary regard to their duty and the rights of others permitted, they would not willingly expose without reserve.

The process resorted to on this occasion, "unlike any known to the humane jurisdiction of the present day, is in their most odious features identical with the general warrants of the dark ages of English liberty, and the writs of assistance which first kindled the spirit of resistance in the American colonies. It is a process to compel the good people of the United States to produce their books and papers, and submit them to a general search in proof of crimes not charged, but suspected; to be enforced by attachment, imprisonment, and infinite distress—a search of books, a search of papers, a search of accounts, a search of letters, and an examination on oath of the persons implicated, touching the matters whereof they are suspected—a process differing in nothing from that issued under the First Charles and Second James, for which, among other things, Scraggs was impeached; and which the House of Commons in 1763, after full argument, solemnly, resolved to be illegal."

Thus baffled in a most iniquitous purpose, the Committee of Investigation returned to Washington and made report of their proceedings, terminating with resolutions: 1. That, by the Bank Charter, the right was reserved to either House of Congress, by

committee, to inspect the books and examine the proceedings of the Bank, as well as to ascertain, if, at any time, it had violated its charter; 2. That, the resolutions of the House of 4th April, 1834, for the appointment of a committee, was in accordance with the charter, and the power of the House; 3. That, the President and Directors of the Bank refusing to submit the books, &c., have contemned the authority of the House; 4. That, either House of Congress has the right to *compel* the production of such books, &c. ; and also to *compel* the President and Directors of the Bank to testify to such interrogatories as are necessary to a full and perfect understanding of the proceedings of the Bank, at any period, within the term of its existence; 5. And that, the Speaker of the House issue his warrant for the President and thirteen Directors, (designated by name,) and bring them to the bar of the House, to answer for their contempt of its lawful authority.

The minority of the committee, Messrs. Edward Everett, and William W. Ellsworth, who had throughout the whole inquiry dissented from their colleagues, on the principles and modes by which it was pursued, also made a report, in which, they ably sustained the Directors of the Bank in their proceedings, and from which, we have abstracted much of what is here given. Their report concluded with the following declaration.

“Firmly believing that they are innocent of the crimes and corruptions with which they have been charged, and that if guilty, they ought not to be compelled to criminate themselves, we are clearly of the opinion, that the Directors of the Bank have been guilty of no contempt of the authority of the House, in having respectfully declined to submit their books for inspection, except as required by charter.”

Being now prepared to discuss, uninterruptedly, the reasons of the Secretary, we shall take them up, *seriatim*, in the order he has placed them, commencing with what we have termed the *principles* on which he founds his power.

First, then, he claims that, *by the contract between the Bank and the United States, absolute and unconditional power is given to the Secretary over the public deposits, so far as the interests of the Stockholders is involved in them.* The error of this position lies in the misconstruction of this contract; and as this is the source whence the administration must derive the defence of its acts, it demands full consideration.

All agree, that *the charter is a contract* which cannot be violated by either party, and more especially by the stronger, without a breach of good faith. It will serve us much, in ascertaining the nature of the contract, to inquire, what were the objects sought by the creation of the Bank. These were, first, the acquisition of a fiscal agent, an auxiliary to the treasury, necessary and proper for the purposes of the government,—in the language of the charter, “to give the necessary facilities for transferring the public



funds from place to place, without charge; for distributing the same in payment of the public creditors;" and for performing "the several and respective duties of the Commissioners of Loans for the several states." And secondly, the regulation of the currency, the fulfilment of one of the most important duties of sovereignty, involving the aggregate and individual interests of the people. Both these objects have been effectually attained. To the first, all parties bear testimony. We have already given ample evidence of the attainment of the second; but this may be rendered more apparent, by contrasting the condition of the currency at the period between the dissolution of the first Bank of the United States, and the incorporation of the second, with its condition at, and for a long time preceding, the withholding of the deposits. The effect of the state of the currency in 1814, is thus stated by Mr. Dallas, 17th October, 1814, in his letter to Mr. Eppes, chairman of the Committee of Ways and Means, of the House of Representatives:

"The condition of the circulating medium of the country, presents another copious source of mischief and embarrassment; the recent exportations of specie have considerably diminished the fund of gold and silver coin; and another considerable portion of that fund has been drawn by the timid and the wary, from the use of the community, into the private coffers of individuals. On the other hand, the multiplication of banks in the several states, has so increased the quantity of paper currency, that it would be difficult to calculate its amount, and still more difficult to ascertain its value, with reference to the capital on which it is issued. But the benefit of this paper currency, is, in a great measure lost, as the suspension of payments in specie, at most of the banks, has suddenly broken the chain of accommodation that previously extended the credit and the circulation of the notes, which were emitted in one State, into every State of the Union. It may, in general, be affirmed, therefore, that there exists at this time, no adequate circulating medium common to the citizens of the United States. The monied transactions of private life, are at a stand, and the fiscal operations of the government, labour with extreme inconvenience."

In the report of this eminent statesman of the 3d of December, 1816, he observes—and his observations were prophecy—

"The treasury has been compelled to accept the payment of duties and taxes, in the local currency of the respective places of payment.

"The comparative value of the local currencies appeared, in some degree, to render this course of payment unequal; but the alternative was either to adopt it, or to abandon the hope of collecting the revenue in any convertible medium, for satisfying the public engagements. The rule was, therefore, declared, that the Treasury would receive and pay, in the notes of banks circulating at par, at the respective places of receiving and paying. For a time, the test of the fact, that the notes did circulate at par, was the agreement of the banks employed as the depositories of the revenue, to credit them as cash in the Treasurer's accounts. *But when the principal banks withdrew that accommodation, and refused to credit as cash any bank notes but those which they had themselves respectively issued,* the fact of the circulation at par was necessarily left to its own notoriety, and to the official responsibility of the collectors. Few notes, except the notes of the local banks,

continued to circulate at par; and such as ~~did~~ so circulate were received by the banks upon special deposits, for safe keeping; and constituted a discredited fund, upon which the Treasurer could only occasionally draw.

"The treasury has been involved in the difficult and delicate task of designating the medium, in which the warrants drawn by the heads of Departments should be respectively paid.

"The revenue is collected throughout the Union, but the amount of the collection is very different in different places; and it has happened, not unfrequently, that the demand for payment was the greatest where the means of payment were the least.

"The Treasury has been compelled to increase the number, and extend the range of banks employed as the depositories of the public revenue, with consequences unavoidably inconvenient and injurious.

"As soon as the differences of the current value of bank notes were introduced, and particularly when one bank refused to credit, as cash, a deposit of the notes of another, the Treasury was driven to a choice of expedients; that is, either to take the hazard of the accumulation of masses of revenue in the hands of the individual collectors and receivers, or to recognise, as places of deposit, the banks (being, however, banks of unquestioned solidity,) established in the districts which were most affected by the course of exchanges. Many powerful reasons led to an adoption of the latter measure; instructions were issued to the collectors and receivers to act accordingly; and the number of banks thus necessarily employed by the Treasury, from Maine to Louisiana, may be stated at ninety-four.

"To the inconveniences incident to this multiplication of the places of deposit, was added the complexity inevitably arising from the various kinds of paper in circulation as money, upon some of which minute calculations were required. Generally speaking, the Treasury has with each bank four accounts:

"An account of cash, meaning (in the absence of coin) the local currency.

"An account of special deposits of bank notes, being notes issued by banks, other than the depository.

"An account of special deposits of Treasury notes, bearing interest.

"An account of deposits of small Treasury notes, not bearing interest.

"Owing to this untoward condition of the machinery for the collection, custody, and distribution of the revenue; to the great extension of the business of receipts and expenditures, and to several accidental causes; the punctual statement and settlement of the Treasurer's accounts have not been found practicable."

The loss sustained by the United States from this deranged state of the currency, from broken banks alone, between 1814 and 1819, is nearly a million and a half of dollars. "The receipts into the treasury during the five years were \$198,000,000. Of this amount \$68,000,000 were received from loans and treasury notes, and \$93,000,000 from customs; upon none of which was there any loss. The whole amount of loss accrued on the collection of \$36,000,000 received from the public lands, internal revenue, direct taxes, and incidental receipts, and was more than one thirty-sixth part accruing from these sources in five years."\*

"This, however, forms but a small portion of the loss to the government. If all that was lost by the extravagant price paid

\* Mr. Wilde's speech on the removal of the deposits, 18th March, 1834.

for loans, by the sale of treasury notes, at a discount, and by the premium paid on exchanges, or the interest allowed for the advances of current money, were taken into the account, the sum would be swelled to many millions.”\*

For further effects produced by the enormous and depreciated issues of the State banks, immediately after the dissolution of the first Bank of the United States, we refer to Mr. Gallatin’s article on banks and currency (see 16th No. of the American Quarterly Review). These effects, and especially their great cause, the suspension of specie payments, he states, “would not have happened, at the time when they took place, had the former Bank of the United States been still in existence. The exaggerated increase of State banks, would not have occurred. That Bank would, as before, have restrained them within proper bounds, and checked their issues; and through the means of its officers, would have been in possession of the earliest symptoms of the approaching danger. It would have put the treasury department upon its guard; both acting in concert, would, certainly, have been able, at least, to retard the event; and, as the treaty of peace was ratified within less than six months after the suspension took place, that catastrophe would have been altogether avoided.”

For the loss to individuals, during the first period we have named, we again refer to the luminous and erudite statements of Mr. Wilde.

“Still, the loss to the Government sinks into utter insignificance compared with that to individuals. During the years ’15 and ’16, the exchange between our different cities varied from 5 to 25 per cent., the ordinary premium for specie being from 10 to 20 per cent. The amount of our domestic exchanges may even then be estimated at not less than \$200,000,000 per annum; they are now much more. If we estimate the difference of exchange, paid on these \$200,000,000, at only 5 per cent. on an average, the industrious classes were taxed, annually, ten millions, for the benefit of banks and brokers, on their domestic exchanges!”

And now for the contrast, as exhibited in the same address, and in our preceding remarks at pages 20, 21.

“The excellence of the Bank of the United States, as latterly conducted, consists in the facility and stability it has given to domestic exchanges. The transfer of funds from place to place, for the purposes of the public expenditure, are as nothing compared with those demanded by the exigencies of commerce. The burden of transmitting the public money under a system of unequal exchanges would seem to be much less than the advantage, in the shape of premiums, to be derived from such exchanges on the remittances of commerce. But the people would have a just right to complain, if the institution sacrificed their interests to its own, by levying a tax on their exchanges beyond the fair equivalent for interest, trouble, postage, and insurance. Under a judicious course of policy, therefore, domestic exchange has latterly been equalized. The remittances of commerce are made subservient to the transmission of the public funds, the deposits of

\* Mr. Wilde’s speech on the removal of the deposits, 18th March, 1834.

the public funds have, in their turn, furnished the means of extending greater facilities to commerce; while the public, in the sum originally paid, and in the duties, subsequently performed by the Bank, received ample compensation for the privileges bestowed on it."

With this view of the objects of the Charter, we proceed to consider the Charter itself, or the special contract by which these were to be attained. We have stated the duties of the agent, and the services which it contracted to perform, to which, however, we must add, the payment to the United States of one and a half millions of dollars, in regard to which, we believe, there is no difference of opinion. It remains to determine what were the covenanted considerations for such services. These we take to be, 1. The exclusive privilege of banking under the authority of Congress, with certain exceptions mentioned in the Charter. 2. The acceptance of its notes in payment of duties. 3. The reception of the deposits during the term of the Charter. The latter consideration is the only disputed one. If it be a consideration for the services of the Bank, it cannot be supposed that its enjoyment was to be wholly at the discretion of any one. The enjoyment, however, had its condition of which we shall fully speak. Are the deposits a consideration for services? Are they part of those *privileges and benefits* for which the Bank covenanted to pay, and did pay, one million and a half of dollars?

Let us suppose the deposits to average, as is commonly estimated, continually, the sum of eight millions per annum. The use of this sum, as banking capital, at five per cent. only, is worth to the Bank 400,000 dollars per annum, which for twenty years, the term of the Charter, produces eight millions of dollars, at simple interest. The sum remaining constantly in the Bank may be less or more; but whatever it be, it is sufficiently large to show, that it must have been a *consideration* with the Bank, in forming the contract; and if nothing more, was deemed a compensation for the bonus.

It is, however, denied by the Secretary and the *party*, "that the custody of the deposits is a consideration of the services of the Bank." We have already noticed the Secretary's views upon this subject, which are thus *supported* by the Corepheus of the party, Mr. Polk, in the House of Representatives. "It was no part of the Government's contract with the Bank, that the deposits should remain in its custody during the whole period of its existence; on the contrary, it was expressly stipulated that they might be withdrawn by the Secretary, at will. Nor was any *reason stated* as the ground of removal. It was not necessary to render the removal lawful, *that the deposits should be unsafe* in the hands of the Bank; other reasons might operate to produce the Secretary's determination." This effort to maintain one asseveration by another is most successfully prostrated by

the reasoning of the minority of the Committee of Ways and Means.

"The power of removing the public deposits is granted or reserved by the 16th section of the Bank Charter, to be exercised by the Secretary of the Treasury, for reasons to be communicated to Congress. This power is not absolute or unconditional, in regard either to the Bank or to the country. Absolute and unconditional power does not reside in any department of Government. Congress hold their own power under the condition of conforming to the principles of justice, as well as to the restraints or limitations contained or prescribed in the Constitution. They cannot grant an absolute and unconditional power to any officer of Government for any purpose of Government. The broadest discretion they can give, must be subject to the implied condition of being exercised in conformity with the Constitution, the laws, the rights of individuals, and the principles of natural justice. Above all, they cannot, in the absence of express declaration, be presumed to have given an unconditional power to an officer of Government to affect rights and privileges conferred or sanctioned by law.

"Various suggestions are made to sustain the position that the exercise of the Secretary's power, whether for good reasons, or for no reasons at all, determines the right of the Bank to the deposits, and leaves the nation free from all reproach of violated faith.

"It is said that he is authorized to act, before he gives his reasons to Congress; and his act, therefore, has validity, whatever may be his reasons. *The efficacy of his act to remove the deposits is not the question.* Whether his reasons be good or bad, his order is, in the first instance, to be respected; but if he is bound to have good reasons, and his reasons have not been good, the subsequent communication of them will show that his act was unjust at the time; and if Congress do not rescind it, they will sanction the injustice. There are innumerable instances in which an order, right or wrong, must be respected when it is given; yet when it is subsequently shown to have been wrong, the injustice is declared, and the aggressor punished.

"It is further said, that the Bank has paid nothing for the use of the deposits, and therefore has no right to them that may not be revoked at pleasure, and that the bonus and other expenditures in the public behalf have been paid by the Bank for the privilege of exclusive banking, and for the benefit of having their notes received in all payments to the United States. If the deposits be a benefit, (and of this there can be no doubt,) the 20th section of the Charter shows that the bonus was given for that benefit as much as for any other. The language of the section is general. The payment is "in consideration of the exclusive privileges and *benefits* conferred by the act," and this is one of them. Whether the receipt of the notes in public payments is really a benefit to the Bank, has been much doubted. That it is a benefit at all comparable to that of having the deposits, cannot be maintained. The obligation of the United States to receive these notes was absolute and unlimited in the Charter of the first Bank, which did not pay any bonus at all; and in the present Charter, for which a large bonus was paid, the engagement to receive them is subject to the pleasure of Congress. The great difference in benefit of the respective Charters of the two banks is, that in the first there was no stipulation for the public deposits, and the Bank paid nothing for its Charter; whereas, in the present Charter, the case is otherwise in both particulars.

"Another suggestion to show that the power of the Secretary over the deposits is absolute and unconditional, is, that the power of Congress to repeal the guaranty of the notes is so. The difference between the cases is, that the Secretary must have reasons for his direction, as the 16th sec-

tion expressly declares, whereas the 14th section, in regard to the notes, makes no such qualification of the powers of Congress.

"It is again said that the power given to the Secretary by the 16th section is his old, or former power, which was absolute and unconditional as it regarded every depositary with whom the public money was placed, and therefore, the present power must be the same. If the power given by the 16th section is the old power, the House is possessed of the Secretary's opinion as to the extent of it. The language of the Secretary's letter is as follows: 'The Treasury Department being intrusted with the administration of the finances of the country, it was always the duty of the Secretary, in the absence of any legislative provision on the subject, to take care that the public money was deposited *in safe keeping*, in the hands of faithful agents, and *in convenient places*, ready to be applied according to the wants of the Government. The law incorporating the Bank has reserved to him, in the fullest extent, the power he before possessed. It does not confer upon him any new power, but reserves to him his former authority without any new limitation.' It is unnecessary to dispute the position that the power in the 16th section is the old power in this sense; for the power in the 16th section is not only admitted, but asserted to go to the very extent which the Secretary claims for the old power, and no further; namely, to the extent that the safety of the deposits, and their distribution in convenient places, require. Such a power is obviously neither absolute nor unconditional. But independent of this definition of his own power by the Secretary, it seems to have been overlooked by the committee, that the present power is to be applied to divest a right; whereas the former power was exercised over the possession of depositories who had no right whatever. The control of the Treasury Department over the public moneys, until the charter of the present Bank, was universally a question between the Treasury and Congress; it is now a question between the Bank and Congress."

In this conclusion of the minority, we submit, that no lawyer, no honest and enlightened man, untrammelled and unbiassed by party, can fail to concur. Their views are similar to those entertained by the Committee on Finance of the Senate, who say:

"The opinion of the Secretary is, that his power over the deposits, so far as respects the rights of the Bank, is not limited to any particular contingencies, but is absolute and unconditional. If it be absolute and unconditional, so far as respects the rights of the Bank, it must be absolute and unconditional in all other respects; because it is obvious, if there be any limitation, that limitation is imposed as much for the benefit of the Bank as for the security of the country. The Bank has contracted for the keeping of the public moneys, and paid for it, as for a privilege or benefit. It has agreed, at the same time, that the Secretary shall possess the power of removal; but, then, it is also agreed, that whenever this power is exercised, the reasons therefor shall be reported to Congress; Congress being thus constituted the final judge as well of the rights of the Bank, in this particular, as of the good of the country. So that, if the Secretary's power be in truth absolute and unconditional, it restrains Congress from judging whether the public good is injured by the removal, just as much as it restrains it from judging whether the rights of the Bank are injured by the removal; because the limitation, if any, is equally for the security of the bank and of the public.

"If the Bank be interested in retaining the deposits, then it is interested in the truth or falsity, in the sufficiency or insufficiency, of the reasons given for their removal. Especially is it so interested, since these reasons

are to be rendered to a tribunal which is to judge over the Secretary, and may form a different opinion on the validity of these reasons, and may reverse his decision. It clearly has an interest in retaining the deposits, and, therefore, is as clearly concerned in the reasons which the Secretary may give for their removal. And as he is bound to give reasons, this very circumstance shows that his authority is not absolute and unconditional. Because, how can an appeal be given from the decision of an absolute power; and how can such a power be called on to give reasons for any instance of its exercise? If it be absolute, its only reason is a reference to its own will.

"The committee think, therefore, that no absolute and unconditional power was conferred on the Secretary; that no authority was given him by which he could deprive the Bank of the custody of the public moneys, without reason; and that therefore his opinion is not to be admitted that, in no event, can any order for removing the deposits impair the right secured to the Bank by the Charter. If removed without good cause, the committee think the removal does impair the rights of the Bank."

An attempt is made by the Secretary and the party to support his interference by precedent; and reference is had to the acts and assumptions of Mr. Crawford, particularly, to his letter of the 13th February, 1817, to the President of the Mechanics Bank of New York; in which, certainly, a power as extensive as unwarranted, was claimed by that gentleman, over the public funds. "The Secretary of the Treasury," he says, "will always be disposed to support the credit of the State Banks, and will invariably, direct transfers from the deposits of the public money, in aid of their legitimate exertions to maintain their credit. But as the proposition of the Bank of the United States, excludes the idea of pressure on its part, no measures of that nature appear to be necessary." No power is given by law, thus, to use the public treasure; and Mr. Crawford mistook his rights and duties when he claimed authority to dispose of it in supporting the credit of State banks. But a broad distinction seems to run between all the acts of the past and present administrations. Wherever extraordinary powers were assumed, by the first, they were used, temporarily, in aid of the law and public weal; but by the last, to the permanent increase of the Executive power, and to the public detriment. And we might observe, if the precedent were admissible, that Mr. Crawford's is distinguished from the present case, by the essential feature that his transfers were made with the consent of the Bank.

But Mr. Crawford was armed with extraordinary powers to compel the resumption of specie payments, by resolution of 30th April, 1816, requiring him to adopt such measures as he might deem necessary to cause the duties and moneys payable to the United States, to be paid in legal currency, and prohibiting after a given day, the receipts in any other medium.

"It appears by Mr. Crawford's letter of 10th December, 1817, to the Speaker of the House of Representatives, assigning his reasons for *not* transferring the deposits from some of the State and District banks to the

Bank of the United States, that he entertained doubts whether the provisions of the 16th section of the bank charter did impose the obligation of transferring to the Bank of the United States the deposits *previously made* in the local banks. He did, nevertheless, communicate his reasons for ordering and directing *otherwise* than that the deposits should be made in the Bank of the United States, whether they had been previously deposited in the local banks or not. A single moment of reflection will show that the transfer of deposits from local banks, not paying specie, to the Bank of the United States, which could pay in nothing but specie, must have been made under this resolution of Congress of 30th of April, 1816, and upon principles altogether inapplicable to the present case. The object of the Secretary of the Treasury was, by one and the same operation, to compel the local banks to resume specie payments, and to withdraw from them the public deposits, to place them in the Bank of the United States. That Bank could receive them only as equivalent to specie, for so only was it bound by its charter to pay them out. It was impossible, then, effectively to withdraw them, but by a simultaneous resumption of specie payments by the banks from which they were to be withdrawn.

To obtain their assent to this twofold measure, then, Mr. Crawford felt himself justified in giving them assurances of all the aid from Government necessary for its accomplishment; and particularly that in effecting the transfer of the deposits from their vaults to those of the Bank of the United States, there should be no advantage taken of them by any unnecessary pressure which should render the operation injurious to them. There can be no doubt that he was fully justified in giving them these assurances. To the liberality with which the bank of the United States co-operated to the accomplishment of these purposes, the letter of Mr. Crawford, of 10th December, 1817, bears signal testimony.

It is equally certain that indulgences were afterwards extended to several of the local banks, beyond what was warranted by law. They furnished the grounds of investigations and inquiries by both Houses of Congress, and, at one time, of direct charges made by Ninian Edwards against Mr. Crawford. The letters of that officer of the 25th of February, 1823, (p. 66,) to the Senate, of the 24th of February, 1823, (p. 72,) to the chairman of a committee of the House of Representatives, and of the 8th May, 1824, (p. 76,) to the chairman of a committee of the House, appointed to investigate the charges of Ninian Edwards, exhibit statements of several instances in which he had caused deposits to be transferred to the local banks for the purpose of *sustaining* them. In justification of the practice, he alleges frequent instances in which it had been resorted to, during the interval between the first and second Banks of the United States; and he cites, as analogous cases, several instances of delays to the payment of custom-house bonds, during the existence of the first Bank of the United States. But so far as such proceedings ever had taken place as expedients to rescue banks from danger, the committee of the House of Representatives, upon the charges of Ninian Edwards, *expressly declare that this is no legal employment of public funds; it is nothing but a gratuitous loan.*"\*

But, the selection of precedents by the Committee of Ways and Means of the House, is not more extraordinary than those adduced by Mr. Forsyth, of the Senate. "The *first* is a resolution offered in the House of Representatives, in 1817, never acted upon, and carrying with it no other authority, than the unsupported opinion of the *mover*, who was the honourable gentleman himself. He proposed that the Secretary of the Treasury, be directed, to withdraw the deposits; *directed*, not by the

\* Printed speech of Mr. J. Q. Adams.



President, but by Congress. The *second* was a resolution offered in the House, by Mr. Spencer of New York, never acted upon, by which the Secretary was *ordered* to withdraw the deposits. The *third* was an extract from Mr. M'Duffie's report, in 1830, averring that the Secretary, *with the sanction of Congress*, has the power of removing the deposits, for various reasons. And thus, propositions to give a peremptory order by a superior, were cited to maintain the claim of the subordinate Secretary, to unlimited and exclusive power. Mr. Forsyth *explained*, that he had not adduced these precedents to show, that the Congress had no power, but that the Secretary had. He thought that Congress also possessed the power of removal, and so far differed from the Secretary; and thus took from the latter, the only pretence that had the colour of justification, namely; that his action was a condition precedent to the action of Congress. Another gentleman, but of the lower House, Mr. Wise, of Virginia, who has the happy faculty of combining qualities, which most persons believe have little affinity for each other, and who, upon his own report is "*most distinctly*" a friend of the administration, and undisguisedly and decidedly a friend to the constitutional power of Congress, to incorporate a bank, and who has treated this subject with much *naïveté* and peculiarity, has protested against the doctrine that Congress has divested or can divest itself of its power, in favour of the Secretary, and has declared, after mature reflection, that the Secretary is bound to lay before Congress, *financial reasons alone*, for the removal of the deposits, and that none of his reasons are good financial reasons. This brings us to the consideration of the second general proposition of the Secretary.

II. That Congress had wholly stript itself of all power over the deposits, having conveyed it to him. The replies of the Committees of the several Chambers are equally conclusive upon this as upon the former proposition.

Thus the minority of the Committee of Ways and Means of the House, say :

"It is finally said, that the power of the Secretary is absolute and unconditional, because Congress have given to him their whole power, reserving none whatever to themselves to touch the deposits until he shall have restored their power to them. This argument begs the question in dispute. The Secretary supposes himself to be an independent judge in this matter, whereas the minority suppose, that he is merely the agent of Congress. His power in the premises is a part of their power entrusted to him as their representative. Though he may use it for sufficient reasons, Congress may use it also for the same reasons. The restraint upon the exercise of his power is imposed by the right of the Bank, and this is all the restraint that is imposed upon the right of Congress. If the Bank has no right, as the committee appear to assert, upon what ground can the right of Congress be denied? If the power reserved to the Secretary, by the 16th section, is neither more nor less than the old power, how is it possible to deny the

right to Congress to control the deposits, under the charter, if Congress had any right to control them before the charter? It is worthy of deep reflection, that the argument put forward by the committee, to sustain the Secretary's reasoning, has carried them to the extent of asserting that Congress abandoned the public treasure to the Secretary and the Bank beyond the possibility of recall.

"The minority state their opinion to the House, that the power of the Secretary over the deposits in the Bank depends for its just exercise upon the existence of adequate causes; that the Bank had a direct and immediate interest in them, and is entitled to an impartial decision upon them; that an unjust decision upon them will be a violation of the charter, and a stain upon the public faith; and that the Secretary's position, that his power is absolute and unconditional in regard to the Bank, is an unwarrantable assumption of power, instead of a just interpretation of that which has been given."

And the minority thus meet the allegation of the Secretary, that the manner in which his duties are exercised, must be subject to the supervision of the President.

"In the execution of this power, the Secretary was the agent of Congress, and not of the President. He derived the power from Congress; he is to report his reasons for using it to Congress. The act of the Secretary in removing the deposits is neither actually, nor by construction, the act of the President, nor are the reasons of the President a satisfaction, either in effect or form, of the requisition of the Secretary to report his reasons. The exercise of this power affects the public treasure, which Congress directed to be placed in the Bank of the United States. The treasure is the treasure of the people, the custody and control of which belongs to the Legislature and to the agents of the Legislature. The custody of the Bank, as the agent of the Legislature, is equally exclusive. The power of the Secretary is, in like manner, exclusive. The Chief Executive Magistrate has no constitutional authority to raise revenue, or to take it into his official possession when raised, or to direct who shall possess it, or to interfere with a direction or authority in this behalf, proceeding from Congress, any more than he possesses authority to direct by whom the public money shall be used and consumed. The Secretary cannot be relieved from the duty of accounting to Congress by any order of the President; nor can the reasons of the President be imposed upon him as a guide, nor be offered to Congress as an excuse. The discretion which is given by the charter, is given to the Secretary alone. The order of removal must come directly from the Secretary; and if it came from the President alone, it would be null and void.

The power of the President to remove the Secretary of the Treasury is no reason for holding that the Secretary is under the direction of the President in the exercise of the discretion conferred by the charter. The President may remove the Secretary whether he performs or does not perform his duty. The legal power to do it is as perfect in the one case as the other. The mere existence of the power does not consequently imply the right of direction or control. The constitutional duty of the President, to see that the laws are faithfully executed, requires him to see that an officer to whom the law confides a discretion is permitted fairly to exercise it. A law which confers a discretion upon one officer, is violated, instead of being faithfully executed, by compelling him to submit to the discretion of another officer. If the President has in this matter, directly or indirectly, controlled the discretion of the Secretary, the law has not been faithfully

executed, and his act has been a violation both of the law and of the constitution."

III. The third position of the Secretary is, that his power over the deposits, does not depend upon their safety, nor upon the fidelity of the Bank; but may be exercised, if their removal tend, in any degree to the interest and convenience of the public.

But for a true view of this pretension we refer again to the report of the minority of the committee of Ways and Means.

"The only adequate cause for removing the public deposits, must be a cause affecting the safety of the public moneys in the Bank, or their distribution for the public service. Such a cause alone directly concerns the subject upon which the power is to be exercised. It is the only cause of which the functions of his office and his relations to the Bank authorize and enable the Secretary to judge, and which is of such a nature as to require immediate action without a previous reference to Congress. It is the only cause which would justly deprive the Bank of the use of the public moneys after having paid for it. It is the only cause which Congress could safely submit to the discretion of the Treasury, without abandoning to that officer the whole scheme of public policy in regard to a National Bank.

1. A cause that does not directly concern the subject upon which the power is to be exercised, must regard the public moneys as an *instrument*, and not as an *object* of the power. To comprehend such a cause, the charter must be construed to give the Secretary an unlimited choice of the objects to be attained by the custody of public moneys; for as none are pointed out by the charter but those of mere custody and transfer, the instant that these cease to be the only objects of the power, we are without any limitation. Whether the purpose of the Secretary be local or general, whether it be to make money dear or cheap, to regulate or disturb exchanges, to promote or retard public works, to increase or diminish the amount of bank discounts, to excite or counteract political movements, each and all of these objects must be within the discretion of the Secretary, if any of them are.

2. That the Secretary should be entrusted with a power necessary to protect the Treasury itself, or to meet the demands upon it, is reasonable. If the public moneys are exposed to danger, *he* must first perceive its approach, and would be best able to measure its extent. He also, from his official position, must know the direction which public engagements require to be given to the means of satisfying them. The power, which either danger or the public credit makes necessary, is one that does not admit of delay, whether Congress be in session or not. The action required, to be effectual, must be in some cases instantaneous. The grant or reservation of such a power to the Secretary of the Treasury was necessary and proper. But if the public moneys were to be made an instrument for effecting an ulterior object, no reason can be imagined why the power of using them should be given to the Secretary rather than to the President, or why it should be given to either instead of being left to the action of Congress. That nothing but the safety and distribution of the national treasure were the lawful objects of the Secretary's power, is conclusively shown by the circumstance that the "Act to establish the Treasury Department," the very moment that the Secretary gave the order not to make the deposits in the Bank of the United States, placed them in the hands of the Treasurer, who could lawfully make no disposition of them, but to keep them securely, to be disbursed according to law. A removal of the deposits for any purpose, except to place them in this custody, would be not only a violation of the rights of the Bank, but of the functions of the Treasurer as created by law."

IV. The claim of the Secretary, of right, to select the future depositaries of the public treasure, when withheld from the Bank of the United States, falls with his pretension to withhold them. If he could not take them away, he could not place them elsewhere. But no portion of this great case calls for more consideration, than the employment of the substitutes for the Bank of the United States. It may be regarded as to the right and the result.

The right of choosing depositaries of the public funds, when such funds are not legally gaged, is claimed, with much speciousness, as pertaining, *ex officio*, to the Secretary of the Treasury. This right is derived, by implication, from the Acts of 1789 and 1792, authorizing the Secretary to superintend the collection of the revenue, and to direct the superintendence of the collection of duties on imports and tonnage, as he shall judge best. If there be danger in attaining power by implication and construction, (and who shall deny it) can our apprehensions be more properly aroused than by this far fetched deduction which puts at the disposition of the Secretary, and now distinctly avowed, at the will of the President, all the moneyed power of the nation? And yet, for many years this enormous power was silently acquiesced in, as was the irresponsible disposition of the funds of the post office. By the Treasury practice, the monies of the government were lodged wherever the Secretary directed. But circumstances, heretofore, so ruled his discretion, that no danger flowed, or was apprehended, from it.

The first Bank of the United States was incorporated, 25th of February, 1791, and furnished a safe place of deposite, almost as soon as the government had a dollar to guard: and though not required by law, that Bank became, and continued, the depositary, with inconsiderable exceptions, until its extinction in 1811. Upon that event the funds remained in the hands of the Secretary, and were deposited by him where he deemed most convenient. The single mindedness of Mr. Madison, which admitted no idea of personal or party influence to mingle with his patriotism—the integrity and intelligence of Messrs. Gallatin, Dallas, and Crawford, which left no doubt of the *purpose* for which they employed their powers—the war of 1812, which gave superabundant employment to all the departments of the government, prevented an inquiry into the legality of these powers, which, though assumed, had not been abused. When that period, rendered so disastrous to the finances of the country, and entailing upon its resources the fiscal burdens, which are but just removed, in consequence of the want of a national Bank, was terminated, a proper and safe depositary was provided *by law* for the funds of the government, in the Bank of the United States, in nine-tenths of the places where they

accumulated. For their disposition in the remaining tenth, there was little regard; and, they may have been supposed, in the custody of the proper officer, the Treasurer.

The proper duty of the Secretary is to superintend the collection of the revenue. The duty of the Treasurer is "to *receive and keep* the moneys of the United States, and to disburse the same on warrants drawn by the Secretary of the Treasury, countersigned by the proper officers, and recorded according to law. He is required to give bond, in the sum of one hundred and fifty thousand dollars, conditioned for the faithful performance of the duties of his office, *and for the fidelity of the persons to be by him employed*. It is the Treasurer, therefore, who is to choose the place of deposit; and he is the best officer, in theory, as well as the only officer, by the law, to perform the act; because the doctrines of general convenience and interest are not so like to reach him. His object will be security, and his bond is the motive for obtaining it. If there be a treasury practice, which has displaced the Treasurer, the practice should be made to conform to the law, or the law to the practice. As the case now stands, the money of the United States is not deposited where it is, by direction, and under the sanction of the law. It is placed in the deposit Banks by an officer who has not the authority so to place it; and in case of controversy, it may possibly be found, not only that the bond of the Treasurer is of no avail, but that, remedies for the loss or detention of the deposits, are not to be obtained in the name of the United States, or in the courts of the United States; but in private names, and in State courts, with all the contingencies incident to litigation in this form. Whatever may be the practice, it is not becoming, that the treasury of the United States should be in any predicament, but that, precisely, in which the law has given its direction to place it."\*

But where did the Secretary get authority to contract with the State Banks? It would seem as if every step of this officer was to be over some broken pillar of the law. He was authorized by no law to make such contracts: nay, he was expressly forbidden by the Act of 1st May, 1820, for the regulation of the departments, which provides, Sec. 6, that no contract shall thereafter be made by the Secretary of State, or of the *Treasury*, or of the Department of War, or of the Navy, except under a law, authorizing the same, or under an appropriation adequate to its fulfilment; and excepting, also, contracts for the subsistence and clothing of the army or navy, and contracts by the Quarter Master's Department, which may be made by the Secretaries of those Departments.

We now proceed to consider the result of the selection of

\* Speech of Mr. Binney.

the State Banks, as the depositaries of the public treasure. In other words, to consider the probable operation of the system proposed by the administration. This may be done with the greater propriety, that the system is, now, fully developed.

Mr. Taney and the Committee of Ways and Means concur, in declaring, that by the adoption of the State Banks, as the fiscal agents of the General Government, a sounder state of the currency, than that lately existing, might soon be obtained. This leads, immediately, to the inquiry into the actual condition of the State Banks. The information attainable on this subject, is neither so full, nor correct, as is to be desired; yet, it is sufficient to enable us to form a tolerable correct judgment. From the returns, collected by Mr. Wilde, of the House of Representatives, it appears that there are, in round numbers, four hundred and fifty Banks in the States, districts, and territories; with an aggregate capital of one hundred and forty-six millions of dollars; circulation of near seventy millions; but which by others is given at an hundred millions; deposits, fifty millions; specie and *specie funds*, fifteen millions. Specie funds do not mean gold and silver; but deposits or balances in distant banks, on which checks may be drawn, which are as available as specie. The actual amount of the precious metals in possession of these banks is supposed not to exceed ten millions. The total amount of discounted paper is about two hundred and thirty-three millions. The interest on their discounts is more than the specie in their vaults.

Thus, it is apparent that the circulation of the State Banks is at least seven times greater than their specie, and that, consequently, they would be wholly unable to withstand any run, which might drain them; and would be compelled to contract their issues, diminish greatly the circulation, and throw into utter confusion the business operations of the whole country, depreciating the value of property in proportion to the reduction of the circulation. The Bank of the United States has less than two dollars in outstanding notes, for one dollar of specie at command. And what confidence is due even to the statements made by State Banks may be gathered, from the late failure of some, and the notorious shifts of others to make up accounts for settling or reporting days. "There are, no doubt, many sound and solvent State Banks, with honest, honourable, and conscientious directors. But any bank, to which the aid of public deposits is necessary for its safety, cannot be fit for a public depository. Upon the real condition of all the State Banks in the State of New York, the recent act of the Legislature, taxing the people with the loan of six millions of dollars, to save them from breaking, is a commentary of very unequivocal significancy."\*

\* Speech of Mr. Adams.

There is a constant tendency in the State Banks to over issue. This is repressible, only, by a power perpetually and uniformly active, which, like gravity in the solar system, shall keep each planet in its orbit. This power is the Bank of the United States. The Secretary of the Treasury, in his letter to the Committee of Ways and Means, seems reluctantly to admit this, but most perversely infers, despite of the maxim, that the effect ceases with the cause, that the Bank being discontinued, the restraint it produces, will remain. Thus he says: "If there be any force in this argument, the paper currency furnished by the State Banks, as well as that issued by the Bank of the United States, ought now to be in a sound state. The Bank of the United States has been in existence seventeen years, and must *have already* exerted all the influence in relation to the currency which can ever be expected from such an institution. And if it exercises a wholesome and salutary control over the conduct of the State Banks, and restrains them within proper bounds, it has had full time and opportunity to exert that power; and the notes of the State Banks, as well as those of the Bank of the United States, ought now to be found in a safe condition. For, it must be admitted, that we have gained but little in chartering the United States Bank, if only the comparative small portion of the paper currency furnished by itself is sound, while the great mass of the circulating medium is inherently vicious and liable to be disordered at any moment. It is believed, that more than three-fourths of the present paper currency is furnished by the State Banks; and if so large a portion of our circulating medium is unsafe and unworthy of credit, then the Bank of the United States is incapable of exercising the salutary control claimed for it, or it has failed to perform its duty to the public. In either event it is time to look for some other remedy."\*

The style and logic of this article are equally admirable. It is supposed, justly supposed, that the presence of the Bank of the United States, like the sun in the system, vivifies, regulates, and preserves the subordinate Banks,—and the Secretary infers, that because it so does, the State Banks will continue, truly and faithfully, to perform their revolution in their proper orbits, when the Bank shall be no more. He urges, that if the Bank *produces* soundness in the State Banks, the object of its being has been attained, and therefore it may be dismissed as useless,—and that, if it have not rendered the circulating medium safe, it has failed in the purpose of its creation. He who would say, that the power of gravity, having, for thousands of years, preserved the order of the universe, has effected the design for which it was created, and that such order will continue, though such power be withdrawn, would argue just as soundly.

\* Letter of Mr. Taney to Committee of Ways and Means, 1834.

Shortly after the hatching of this dilemma, the Secretary, with the inconsistency so conspicuous in the report of his "Reasons," recognises the necessity of preserving the Bank, or of creating a substitute, *if the present currency be in a sound and healthy state*. But to avoid the utter discomfiture and disgrace which are otherwise inevitable from this admission, he denies the soundness of the currency; and by reason of the disproportion of specie to the paper circulation, the large quantity of bank notes whose value is less than five dollars, and the impotency of the government of the United States to restrain these issues, he infers, "that the condition of the currency is obviously such, that the nation should not be content with it, nor desire to continue it, in its present state." Not content with, not desirous to continue in its present state, a currency which is pronounced by every statesman who is not a disciple of Jacksonism, in this, and in every other country, to be better than a metallic one! A currency which, in the very same paragraph, the Secretary says, every one firmly believes will be paid in coin! This is an issue upon which the Secretary, the administration, and the party, have put themselves against the evidence of truth and the interests of the nation. What man in the country complained of the condition of the currency, one year since? Who thought of its condition, save those few thinking men who produced it,—those who had leisure and taste to seek and admire its causes,—and those, who desired to destroy it, because it was a good, not the work of their hands, and because it was an obstacle in their path to evil? The currency is the blood of the social and commercial system. Like that of the natural body it runs its course, whilst in health, giving life and joy, but producing scarce a consciousness of its own existence. It is when deranged, diseased, that its stoppings, its throbs and throes, and revulsions, make us feel and know its presence. In its healthy state, the wise and discreet physician does not interfere with it. The ignorant quack, unable to discriminate between the symptoms of health and disease, alone has audacity to prescribe his nostrums, regardless whether they give life or death, if his interest be served.

If the currency were not perfect, if the abundance of paper of small denominations limited the use of silver; if the mistaken legislation of the country expelled gold from circulation, these were evils which the people, ever awake to their interests, and ever competent to learn and promote them, would have, in due season, fully remedied. Already, without the promptings of the general government, had the States commenced the suppression of small notes; and so fast as the sense of the true interests of the people prevailed over the interests of the banks, this suppression would, and will, be extended. Be-



yond this, no effort, of the general government can avail. For though it may enforce the State banks, in its service, say *one hundred*, to disuse notes under a designated amount, it will have no influence over the remaining three hundred, and fifty banks, whose pernicious issues, unchecked by a regulating power, would be enlarged with decrease of competition. Already, had the nation called for the interference of the legislature; and, had General Jackson and *his* Secretary of the Treasury been with the Pre-adamites, had the war against the Bank never commenced, the measures in progress to retain gold in the country would have been instituted.

But, says Mr. Taney, the currency is deranged; it is unsound, because liable to constant fluctuation; and the remedy lies in the increase of the metallic bases, and, the reduction of paper circulation. It is admitted, not that the currency is unsound, but that it may be improved, by those means, which the sagacity of the nation had already discovered, and its wisdom had engaged to supply. But to this purpose, the preservation of the Bank of the United States is indispensable; because with it will depart that soundness of the currency which we were about to improve. The substance will be annihilated, with all its modes of being. The measures, therefore, of the administration will be destructive of all the ends which they *profess* to attain, however effectual they may prove in the accomplishment of those which are unavowed.

But the Secretary declares, that he does "not perceive, that a Bank of the United States, upon any plan, is likely to diminish the evil." And yet it is universally admitted, that the Bank of the United States did circumscribe the issue, did, in a word produce one of the very results desired. The manner in which the Bank checks the issues of the State Banks is equally simple and obvious. It consists in receiving the notes of all which are solvent, and requiring payment from time to time, without suffering the balance, due by any, to become too large. This restricting agency being removed, what is the substitute. Simply that, "After the 3d March, 1836, no Bank be used as the depository of the public money which shall issue or pay out, notes below five dollars: and the notes of no bank to be received in payment of debts due to the United States Bank, which Bank shall issue and pay out notes of a less denomination, than that above mentioned, after that time; nor shall any bank be a depository which does not pay specie on demand for its notes."

Now, the inefficiency of this very plan is demonstrated by the Secretary himself, in a few preceding paragraphs. "Gold and silver," he says, truly, "will never circulate, where banks issue notes, which come in competition with them. For it will

invariably happen, that when the circulating medium is composed of different kinds of money, and one of them is less valuable than the other, but not sufficiently depreciated to be discredited, the inferior will, after a time, become the general currency, and the more valuable will wholly disappear." The mere exclusion, therefore, of the notes of the State banks, which issue bills of small denominations, will be entirely inadequate. The only effect of that regulation will be, to render them a depreciated currency; which, as the Secretary admits, always, usurps the circulation. Every one will receive it for sales, because they add a little to the price. Every one will take it for doubtful debts, rather than go unpaid, and every one will pass it off again for fear of loss.\*

But suppose the mean offered, to effect a desirable purpose, be useful and be made effective by the co-operation of the States, a measure extremely problematical, what is to prevent it from being quite efficient when applied through the United States Bank? As that Bank acts uniformly and simultaneously, throughout the Union, can there be a doubt, that the effect would be more prompt and universal? But give it all the results predicted, what is to compensate for the unrestrained issues of all other notes, which all admit may, and which we say, must, ensue the dissolution of the United States Bank?

If the past had not ceased to be the monitor of the future, if experience were not wholly rejected as a guide, we would appeal to history to support us in the declaration, that there is no compensation. But, if it be the interest of our rulers to close their eyes to this light, it is not that of the people. During the existence of the first Bank of the United States, we had a sound currency, uniform taxation, and stable exchanges. In January, 1811, there were in the United States, including the national Bank, eighty-five banks, whose capital amounted to fifty-two millions, five hundred and ten thousand dollars; notes in circulation to twenty-eight millions; specie to fifteen millions. In 1811, we destroyed the Bank, and deprived the country of a capital of seven millions, which, out of ten, belonged to foreigners. In 1816, in five years we had two hundred and forty-two State banks, with a capital of ninety-one millions; notes in circulation, sixty-six and a half millions; and specie, nineteen millions. Our currency became deranged, specie payments suspended, depreciation immense, and exchange fluctuating from six to twenty-five per cent. We re-created the Bank in 1816, and, on the first of January, 1820, there were three hundred and two Banks, including that of the United States, with a capital of more than one hundred and thirty-three millions; a circulation of notes of less than forty-four millions; and specie exceeding nineteen millions. Thus

\* Speech of Mr. Wilde.

the amount of notes in circulation was one million less than immediately before the suspension of specie payments; and twenty-three millions less, than in 1816. Has not the Bank of the United States, then, at all periods of its existence, circumscribed and preserved, within due bounds, the issues of the State banks, and have not the State banks at all times, when unrestrained, made their issues excessive?\*

The public feels that there is no security against this evil. It has learned it from experience; and this very feeling, this distrust of their paper, is the very evil, the very serious evil, which the State banks have to encounter. They know that confidence in them is far greater where there exists a power elsewhere to prevent excess and depreciation. Such a power, therefore, is friendly to their best interests. It gives confidence and credit to them, one and all. Hence, a vast majority of the State banks, nearly all, perhaps, except those, which expect to be objects of particular favour, desire the continuance of a national bank, as an institution highly useful to themselves.†

Is not the threatened, the onward course of things now tending directly to the state of 1816? Has not every effort been made, through the public officers, the press, and every other mode of influence, to cause the multiplication of State banks? Has it not, every where, been urged upon the people to establish State banks, independent banks, to supply the place of the National Bank? Behold the result. Of late there have been established, banks, with the following amounts of capital, in the States of,

Maine	-	-	-	-	\$ 100,000
Vermont	-	-	-	-	600,000
Rhode Island,	-	-	-	-	1,000,000
Connecticut,	-	-	-	-	600,000
New Jersey,	-	-	-	-	100,000
New York,	-	-	-	-	4,000,000
Pennsylvania,	-	-	-	-	4,400,000
Maryland,	-	-	-	-	500,000
North Carolina,	-	-	-	-	2,800,000
South Carolina,	-	-	-	-	500,000
Mississippi,	-	-	-	-	700,000
Louisiana,	-	-	-	-	12,000,000
Tennessee,	-	-	-	-	5,000,000
Kentucky,	-	-	-	-	5,000,000
Ohio,	-	-	-	-	4,000,000
Indiana,	-	-	-	-	1,600,000
					<hr/>
					\$ 42,900,000

\* Gallatin's Essay on Banking and Currency.

† Webster's Remarks in Senate, 1834.

But we are not to stop, here, with four hundred and fifty Banks in actual operation, with a circulation of one hundred millions of notes, with a great many more about to go into operation; but multitudes of propositions are before the State legislatures for new charters; and the system will continue to spread and increase. Each of these banks will strive to extend its circulation, and will endeavour to avoid specie payments; the more rotten and worthless they are, the more strenuous will be their efforts for these purposes.

But whence does the executive derive the right, so boldly assumed, of providing the country with a currency, whether paper or metallic? This assumption is in every point of view illegal—so palpably illegal, that the majority of the Committee of Ways and Means of the House of Representatives have not ventured, notwithstanding their efforts to cover the Secretary of the Treasury, in every other point, to support him in this. They disclaim for him the right, which not only he, but the President of the United States, had distinctly and repeatedly asserted.

The minority of the Committee of Ways and Means have thus conclusively disposed of this branch of the subject.

“The value of the measure, as an operation of finance, to expel one currency and to introduce a better, has been already tested, in the short time that has elapsed since the order of removal. The discounts of the Bank have been partially reduced, yet the circulation of the Bank, instead of being diminished, has increased. The local bank paper, except for local purposes, has generally depreciated, and the paper of the Bank of the United States is at par in all places except where it is above par. But without adverting farther to the incompetency of the means proposed to attain the end, it is an imputation upon the Congress of 1816 to say they intended to authorize the Secretary of the Treasury to use any means whatever for the attainment of such an end. The avowed purpose of the Secretary is to change the currency of the country, and to change it during the very time in which Congress have made a different provision in regard to it. The purpose is to be effected by compelling the Bank of the United States to cease lending, and by enabling the deposit banks to lend; by compelling the one to cease circulating bank notes, and enabling the others to circulate them more extensively. In fine, by compelling them all to give him indirectly the management of banks, without any law to warrant it, and to surrender it themselves, contrary to the laws by which they are exclusively entitled to it. A power to do this no Congress could lawfully give to a Secretary of the Treasury, and no Congress therefore should be presumed to have given it. It is a delegation of the highest powers of legislation, under the form of ministerial agency. If there is any legislative power which demands more circumspection in its use than any other, it is that of regulating the currency. The currency is the measure of value of every man's property, of his contracts, of indemnity for the breach of them, and of the revenue of the country; and without a due adjustment of it, it is a hopeless effort to distribute in equal proportion among the citizens either the burdens or advantages of civil society. A deranged currency deranges every institution of the country that has any relation to property. It makes laws, promises, the verdicts of juries and the judgments of courts, speak unintentionally the language of falsehood or deceit. It gives a premium to fraud, and strips honest labour of its scanty earnings, by paying to it half of its just recompense in the false and counterfeit name of the whole. Yet this power the Secretary of the Treasury claims to exercise, by delegation from the representatives of the people, and he has pro-

ceeded to the exercise of it, with consequences which are now spreading in a wave of destruction over the whole country. The Secretary claims the power to remove the public deposits from the Bank, if in any degree it tends to promote the convenience of the people; that is to say, if it so tends in his opinion; and his opinion, with this mighty lever of the public revenue, is, consequently, to sway the universal interests of this immense people. And what are the direct evidences that Congress meant to give the Secretary of the Treasury any such power? He is not by law entrusted with the custody of a single dollar of the public treasure. His hands do not legally receive it, and cannot legally hold it. His duty is to prepare plans for the management and improvement of the revenue, to prepare estimates of the revenue and expenditures, to superintend the collection of the revenue, to decide on the forms of keeping and stating accounts, and to grant warrants in pursuance of appropriations by law. The notes of the Bank of the United States, against which this battery is directed, he is bound by law to protect, by requiring all public collectors to receive them in all payments to the United States. The stock of the nation in the Bank of the United States he cannot sell, nor separate their interest, to the extent of seven millions, from that of the other stockholders of the Bank. The payment of the interest and principal of the public debt must be made by and through the Bank, as commissioners of loans. The military pensions must be paid through the same channel. And thus, while several permanent laws of Congress, without any limitation in point of time, sustain the circulation of the Bank, the relations between the Bank and the Treasury, and the control thus obtained over the currency of the country, the Secretary of the Treasury, under a provisional clause in the Bank charter, to order that the deposits of the public moneys shall not be made there, claims the authority to break up the present system, and to substitute another, for regulating the currency and property of twenty-four States, and thirteen millions of people. The minority do not believe that a like attempt has ever before been made, with or without authority, and all present indications are inconceivably deceptive, if the result shall not afford a memorable warning against the like attempt again.

The Secretary's plan is now called an *experiment*. The name is adopted, because it would seem only to defer, and not absolutely to destroy, the hope of ultimate safety. It is adopted, because it would seem to make those who prosecute it responsible for less, because they promise less. But the change of name changes neither the thing nor the responsibility for it. If it be an *experiment*, what law, what principle of our civil associations, authorizes the Treasury Department to try such an experiment? What security does Government afford to the property of the citizens, if the Treasury may try experiments with it? If it be an experiment, what authorized its trial in a day of unusual prosperity, and when the only rational prayer to the civil ruler was, "let us alone?" What justifies its continuance, when the first test that has been cast into the crucible with the precious materials of human happiness, has nearly decomposed them all, and threatens to convert them into poisons that will corrode and canker the country to its very heart? It is no longer an experiment. It has been tried, exposed, and ought to be rejected. It is no longer an experiment, unless it would deserve the name of an experiment to try whether life can be supported without vital air, or the labourer and his children without daily bread.

"If it should finally happen, in the progress of the experiment, that a currency is created such as the Secretary anticipates, what is that currency to be to the country, and what is the country to be by means of it? This question may be answered by our own history, as it might be answered without the aid of history. It is not to be a national currency, nor a currency partly local, and partly national, maintained every where in the condition of equality, by a universally pervading influence, but it is to be a variety of local currencies, subject to local influence only. The State Banks, and the State Banks only, are to furnish it. They are to furnish it under the patronage of the Treasury, and with a full knowledge of the maxims which have been quoted by the committee, *'that the borrower is the servant of the lender,'* and that *'he who controls a bank, controls the debtors of a bank,'* maxims which will be found to lose none of their force when State banks shall feel the effect of their position as borrowers of the Treasury, and

debtors shall feel it also as borrowers of State banks that are under the control of the Treasury.

"It will be a currency wholly removed from that restraint which a national institution is alone capable of imposing in all parts of the Union, that is to say, free from all banking restraint whatever; for, practically, there can be no restraint where there is no general and pervading power to enforce it. In some, perhaps in several, of the untrammelled and independent State banks, banking will be conducted upon judicious principles, so far as it regards their own operations; and their own local currency may continue for a time locally sound. But where shall be the controlling cause that shall secure this result, where the principles of banking are unsound, and where the desire of large profits shall tempt State banks to extend their issues beyond that measure which experience has ascertained to be the only safe and accurate measure? Where is to be found the universal presence of a test that will instantly detect excess, and lead to its detection? That test is to be found in a national paper, based upon the precious metals, sustained by the law of the whole land, received in payment of all public dues, circulating every where, and furnishing a standard of comparison every where. Where, again, is to be found the necessity, as well as the power, of applying the corrective? This corrective is to be found in an institution which issues that national paper, and which, in self-defence, and in defence of the nation also, must repress the circulation of every bank that does not provide it with the means of discharging the public treasure in all parts of the United States. The paper that is really sound, will be as good as its own, and will be received as such, and may circulate as such. But if the paper of any one of the State banks is not as good as its own, such an institution cannot receive it, because it cannot account for it every where to Government, in an equal amount of its own paper or of specie. If it cannot be received by the national institution, it must return to those who issue it, and the corrective is at once applied.

"The system of local banks, of which those to be employed by the Treasury are to form a part, is, therefore, defective in this, that their circulation will be local. They will be constantly endeavouring, at least in a great many cases, to send out their paper to excess, and there cannot be the regular application of the corrective, that will as constantly prevent it. It may be repressed in some instances, in an irregular way, by sound State banks; it may also be partially repressed by demands from other States; but the effort to do it regularly, will be without inducement, and will not be sustained by the requisite ability. Excess will creep upon the country until it is universally diffused; and when an accidental state of the balances shall turn the excess suddenly back upon the banks which have issued it, dishonor will come, and with it universal alarm and bankruptcy. This is the history of the past, and a lesson for the future. A confederation of State Banks, sanctioned by the laws of the States, is a scheme which the minority do not think it necessary to combat, until some one shall propose it, and present its outlines. An attempt to regulate the currency by the operations of State Banks, through private compacts, with each other, or with the Treasury Department, will probably fail, however often repeated, as it has failed already. A partnership of different corporations, for profit and loss, or for mutual guaranty, with independent boards of direction, is as strange a contrivance for the security of stockholders, as it is for the control and regulation of the currency. When the question of providing a regulation for the currency shall be deliberately considered, the minority have no doubt that the project of employing State banks for national purposes will be universally rejected as impracticable."

With regard to the employment of the State banks, as the agents of the general government, there are other views of grave character which richly merit consideration, and which we present in the words of Mr. Corwin of Ohio.

"But suppose your league of Treasury banks should succeed in establishing their credit so as to give general currency to their paper; will not those banks, in that way, by loans and exchanges, gain the same power and control over the

business and trade of the country, which, you say, is now possessed by the United States Bank—that dangerous power, for the possession of which, you say, it must be abolished? And what is gained by exchanging the one for the other? What will your condition be when your *league banks* shall be able to crush, if they choose, the trade of the country? Can you strike them out of existence? No!—over them and their charters you have no control. The State Legislatures gave them life, and will, at their pleasure, prolong their existence. Suppose their charters expire; they are your Treasury agents; they will then be indispensable to your system of finance. Will they consent to expire? Will not the stockholders in them be just as anxious for a renewal of their charters, as the owners of stock in the United States Bank now are for a renewal of theirs? Yes, Sir, they will, and they will be just as little scrupulous about the means employed to obtain their end. This image with a hundred heads, which you are now erecting, will be just as difficult to destroy, as the monster you profess so much to fear. The impure priesthood of Mammon will clamour just as loudly for their hundred-headed idol god, as do those now whom you profess to regard with so much horror. You will find, when the discovery will be too late, that possessing stock in a State bank does not of itself make a Cato, nor owning the same property in the United States Bank convert a good citizen into a Catiline.

“There is another view of the dangerous connexion between the Executive Government here and the banks of the States, which I cannot pass without notice. If your scheme ever does succeed, if it works well in your fiscal affairs at all, it will of course be desirable to continue it in steady operation for a long time to come. But there will be obstacles to this. The charters of some of your banks will terminate. The Secretary of the Treasury will, of course, desire to have these charters renewed by the Legislatures of the States in which they are situated. To effect this, the influence of the bank will be first exerted on the Treasury Department here, by offering to do your business on very advantageous terms; the Secretary of the Treasury, with the aid of the power, popularity, and influence of the President for the time being, will bear down upon your State Legislatures: one vote, or two, or three, may, perhaps, decide the fate of your bank. Will not those votes be secured? Yes, the whole patronage of the Federal Government in this scheme, from time to time, will be tempted into the legislative halls of the States. We have heard much of consolidation; much of the danger of merging the independence of the States in the overwhelming power of the Federal Government. If the wit of man were tasked to invent a cunning, insidious plan, by which this ruin might be wrought, he could not devise one more likely to effect his diabolical purpose than that proposed in this Treasury invention. Give the Executive the power to confer favours on so many different companies of men, who also stand closely connected with the State Governments, and you have so many centripetal forces, drawing, by the resistless influence of pecuniary interest, the independence of the States into the vortex of Federal control. These twenty-four states, that now shine, with such mild and pure lustre, will be drawn from their spheres, and their lights quenched forever in the superior blaze of one great central sun.”

And, now, let us also see, how this State-bank currency is to affect the dealers of the Middle, South, and South-western States. On this head, we will be instructed by Mr. Poindexter.

“The merchants of the Middle States, the Southern, South-western, and Western States, supply themselves with foreign merchandise, for the annual supply of their customers, at this great emporium of commerce. How, Sir, do they make their remittances in payment of these goods? At present, through the medium of a National Bank, they may, without difficulty, deposit their local State paper, the credit of which is good where it is issued, in a Branch Bank of the United States, and obtain a check on any part of the United States, however remote, at a very small discount, not exceeding one per cent. They do not run the risk of a protest, as in the case of bills of exchange drawn by individuals, or a company of merchants; they run no risk in transmitting such a check by mail, because, if lost,

it may be renewed, and the holder cannot demand payment without the endorsement of the person in whose favour it was drawn. Thus the intercourse between the Western country and New York, or the other commercial cities on the seaboard, can be carried on without risk, and for a very small premium, by means of a National Bank and a general currency. But let us look at the other side of the picture. Suppose this great point, which is made a *desideratum* in the policy of this administration, of prostrating the Bank of the United States, should prevail, we shall then be thrown back upon the local State currency, and the ordinary means of remittances, through the medium of bills of exchange. Suppose, under this state of things, a merchant in Natchez, or Mobile, or New Orleans, should become debtor for goods, wares, and merchandise, to an importing merchant in the city of New York, payable in six and twelve months. He sells his goods to his customers, and receives in payment the sound currency of the State in which they are sold, (and he can obtain payment in no other currency.)

"Well, Sir, he takes with him these bank notes, issued by banks which have more specie in their vaults than notes in circulation; equal, in the amount of their solid capital, to any institution of the kind in the world, and offers them, in payment of his debt, to the New York merchant. And what, Sir, will he be told? Why, Sir, the cautious merchant would say to him—'Go into Wall street, and whatever your paper is worth at the brokers, I will take it at the same rate of discount, but give me the note of a pet bank in this city, and I will take it at par.' The Wall street broker would exhibit to the applicant a regular graduated list of the value of bank paper from Passamaquoddy to the Belize; this scale, Sir, will be regulated to suit the taste of the Wall street brokers, who, without the intervention of a national currency, will take the command and control of the fiscal concerns of this country. New York bank paper would far transcend in value the bank paper of any other State in the Union; it would find pasture in all that vast region of country where the retail merchant is a debtor for foreign goods purchased in the New York market; it would be sought for there, and even bought at a premium by all who desired to make remittances to the city of New York. What, Sir, has been the progress of this system since the removal of the public deposits? We find that already the bank paper of the whole Western and Southern country is below par in the Northern cities, at from five to ten per cent. This inequality will increase rather than diminish, as the system advances to maturity. Besides this unfavourable operation on the whole interior of the Union, it is manifest that the exchange capital of the country must be deposited in New York, and other great commercial cities, where the rate of discount on the domestic exchanges of the country will be fixed so as to produce the best practicable profit to those who deal in them. Now, by the agency of a general currency, the people who reside beyond the mountains, in the great valley of the Mississippi, may transfer their funds without risk, and at a small expense, to any portion of the United States; but if they are driven, by the destruction of this currency, to the necessity of making their remittances in local bank paper or bills of exchange, they must inevitably sustain an annual loss of from six to ten per cent. on the whole amount of these remittances."

But, from elements such as these, we are to have not only a sounder currency than that furnished by the Bank of the United States, but, God save the mark! a hard money currency! When the peal of indignation swelled from every portion of the country against the injustice committed on the United States Bank, and the reasons concocted by the President and his Secretary were scouted as impudent and illusory, the ground of defence was changed; and though prior to the first of October, no intimation was given of an intention to endeavour the introduction of a metallic currency, we are now told, that the government is making an *experiment* whether they cannot substitute for one



of the best currencies in the world, a currency of coin, as in France. And in this experiment, the ease, the happiness, the bread of millions are to be jeopardized.

This object, however, is no sooner declared, than with the inconsistency inseparable from error and wrong, its impracticability is demonstrated by the Secretary himself. "No commercial or manufacturing community," he observes, "could conduct its business to any advantage without a liberal system of credit, and a facility of obtaining money on loan, when the exigencies of their business require it. *This cannot be obtained without the aid of a paper circulation founded on credit.* It is therefore not the interest of the country to put down the paper currency altogether!!

"The great object should be to give it a foundation on which it will safely stand. (*On what rests the present currency which is every where, at will, without cost, convertible into specie?*) a circulating medium composed of paper and gold and silver in just proportions (*What other is the present?*) would not be liable to be constantly disordered by the accidental embarrassments or imprudencies of trade—nor by a combination of the monied interest for political purposes." (*These assertions are disproved by our present condition; by the combination of the New York Safety Fund banks, and by the combination of banks in the service of the government.*)

"The state of the currency, then," he continues, "which is proposed in the foregoing observations, would provide silver and gold for ordinary domestic purposes and the smaller payments—and the banks of the different States would easily be able to furnish exchanges between distant places according to the wants of commerce. (*Furnish exchanges! Certainly, as in 1816, at from 6 to 25 per cent.*) There cannot, therefore, be any necessity for a paper circulation of *general credit* throughout the country. Funds are more conveniently and safely transferred, from place to place, by drafts and bills of exchange, than by bank notes. (*In what way does the Bank of the United States perform exchanges to the amount of two hundred and fifty-five millions annually?*) \* \* \* \* \* "The chief object of the plan, I propose, is to increase the proportion of the metallic currency without diminishing inconveniently the general mass of the circulating medium, and any provision tending to enlarge the proportion of paper beyond what the public convenience requires should be studiously avoided."

Now, again, we say, what was the currency lately prevailing? Was it not based on a metallic basis, which was on the increase, and to be enlarged by the very means now proposed? The fruition of which, no measures of the administration will

hasten. And was not the enlargement of paper beyond the requisition of public convenience sedulously avoided?

But is it in contempt of our intellects, or from the inepititude of his own, that we are told by the Secretary, that *a paper circulation founded on credit, is indispensable to a commercial and manufacturing community; and that there cannot be any necessity (profit for that is commercial necessity,) for a paper circulation of general credit throughout the country?* Upon this point we oppose President Madison to Secretary Taney, a giant to a pigmy. "But for the interests of the community at large," says the President, in his Message of December, 1816, "as well as the purposes of the Treasury, it is essential that the nation should possess a currency of *equal value, credit and use, wherever it may circulate.*" A thousand illustrations of the falsity and absurdity of the position of the Secretary could be given. It is enough to say, that, with a bill) of general credit throughout the country, (a draft of the United States Bank, for instance,) we can procure specie wherever it exists, at half per cent. cost, and that for a bill of local credit, (of a bank in Missouri or Albany,) we must pay a premium (if the Bank of the United States be no more,) of from twelve to fifteen per cent. And this great per centage is the difference on the profit of the merchant or consumer, and an onerous tax on the industry of the country.

Thus, then, though it be impossible to employ the State banks with safety or profit to the country, and though a metallic currency is neither practicable nor desirable, the one is to be obstinately persevered in, though it ruin the nation, because it will increase the power of the *government*; and the other, that the eyes of the people, dazzled and blinded, may not see their approaching destruction.

Again: this paper circulation must form the far larger portion of our currency; and, therefore, instead of a sound and uniform currency, so much admired in a commercial community, the Secretary is avowedly labouring to give us a hundred currencies, to introduce expense, delay, irresistible confusion and irregularity in all commercial transactions. During the suspension of specie payments, the currency of the several States varied, "not only from time to time, but at the same time, from State to State, and in the same State, from place to place. In New England, where these payments were not discontinued, the currency was equal in value to specie, it was, at the same, time at a discount of seven per cent. in New York and Charleston, of fifteen in Philadelphia, of twenty and twenty-five in Baltimore and Washington, with every possible variation in other places and States."\*

There is another result of this operation which we have al-

\* Gallatin on Banking, &c.

ready touched, but which merits further notice. It is the dependence and subservience of the State Banks, selected by the Secretary, upon the government—upon the party. To effect this, we have just reason to believe, is the true motive of the disastrous measures against the Bank; and the contracts made by the Secretary with them, put them, wholly, at his mercy; making them the vassals of the administration; enabling it, through them, to operate upon the stockholders and their debtors.

Upon this head, we select the following just and apposite remarks, from the able exposition of Mr. Southard, in Senate, on the 8th January, 1834.

“The extent of power and influence which this act draws to the Secretary, and through him to the Executive, upon his avowed principles, is enormous, dangerous to the interests of the people and the liberties of the country. It places all the selected banks, and, through them, many other State institutions, at the mercy of the Secretary of the Treasury. He may, at will, require security for the public money, or he may require none. He may require the payment of heavy expenses and compensation for his agencies, and fasten them on whom he chooses. He may decide, at pleasure, which of them must transfer money from one extreme of the Union to another, and when and where they shall transfer it—acts which they may, and probably will, be incompetent to perform; and he may discharge them, without warning, from the service of the Government. All this he may do for causes entirely unconnected with the business of the Treasury, and in no way concerning the public interest. There is no responsibility upon him—they have no means of resistance. And his power of favoritism, in the deposit of money, distribution of duties, and compensation, is as unlimited as his power of injury and injustice; and he has every possible temptation to its exercise for the worst of purposes. Subservience to his will will become the ready and sure road to benefits. Sir, the very act is calculated to create an army of servile sycophants and supporters. Whether it will produce that result is yet to be shown. The promptness with which the representatives of some of the banks have volunteered their defence of him, and the manner in which his favour was received by at least one, gives no very auspicious augury as to the result, but too clearly indicates the effect upon their dispositions. The Secretary was very promptly, informed of “the high sense entertained by the Directors of one of the banks, of the honour conferred upon it by *so distinguished a mark of his confidence*,”—a quick stooping to degradation.

“This state of things is prescribed, not by the Legislature, but by a Secretary, and is not dependent upon and regulated by law, but by *his discretion*. And the man who presumes thus to act, tells Congress that his acts are under the controul of the President. He says, in effect, “I have no official will—the President may order me as he pleases—the whole is at the command of the President.” If there has been a larger or more dangerous stretch of Executive power and influence, I have not discovered it. If Senators are prepared to meet the consequences of such an assumption, they have but to approve the reasons of the Secretary. The day is not long passed by, when it would have met the deep-toned execrations of the present supporters of Executive infallibility.

“The law which created the Bank, which directed where and how the public treasure was to be kept, and what was to be done, did not *so* regulate this subject. The intercourse between the Government and the Bank, in relation to the public money, was fixed and authorized by law. The acts directed to be done, or omitted, were, *under it*, matters of *legal right*, not of *Executive favour*. The law was paramount and triumphant. There was no temptation to favoritism or corruption. But, under the recent innovation, while such unlimited powers are exercised by the Secretary and the Executive, there must be favoritism and corruption. I have no faith to bestow on the purity of individual virtue, acting without law, in the midst of such temptations. Much less can I approve of com-

duct in a Secretary so violative of all law, and leading so directly to encroachments which are dangerous to the liberties which we enjoy."

On the other hand, so odious was this slavery, that many banks refused to assume the yoke; and others, finding it intolerable, have indignantly cast it from their necks.

The use which the Secretary and the administration, might, and would make, of the public money, to enslave these banks is aptly illustrated by the "*transfer drafts*," issued for no fiscal purpose—for no government use, but, solely, to protect the *pet* or *trap* banks, against a suppositious hostility of the Bank of the United States. This protection is the price paid by the lord to the *villein* for his most abject service, binding him to *all labours*, and at *all times*.

A favourable opportunity here presents itself, to notice the manner in which the war has been conducted against the Bank of the United States.

"The act of removal has not only been an act of declared hostility, but it has been preceded and followed by all the customary practices of embittered war. The Bank has never been directly apprised of any thing that the Treasury purposed to carry into effect against her. If made aware of it, it has been through rumours in the streets, or hints in the newspapers, and never from the Treasury Department, until the moment that the blow was given. The determination to remove the deposits has not, to this day, been made known to the Bank by any official communication from the Treasury; no evidence certainly of such a communication has been sent to this House. An order of the 26th September, 1833, by the Secretary to the President of the Bank, to deliver to the collector at Philadelphia all bonds to the United States, payable on or after the 1st of October, was the only annunciation to the Bank in Philadelphia; and this, by the collectors's letter of the 28th, would seem to have been communicated to the Bank on the 30th of September. Yet, it is now known, that the removal of the deposits was a foregone conclusion a considerable time before that.

"The times and amounts in which the deposits were to be drawn by the Treasury, were, not only not made known, but, concealed from the Bank. The Treasurer had been for years in the practice of sending daily lists to the Bank of every draft drawn upon it, stating both the date and the amounts, without the names of the holders; and he also sent weekly lists of the drafts, with the particulars in every point. These were the suggestions of amity to assist the Bank, by the fullest information of the Treasury purposes. But, as soon as the policy of the Treasury Department was altered, and a hostile attitude assumed, the practice of daily and weekly lists was continued; but they did not speak the whole truth. Drafts to an immense amount were withheld from the lists, to be used according to contingencies, and at points where the Bank might or might not be prepared to meet them; and the daily and weekly lists consequently became instruments of deception to the Bank. The Bank was left to ascertain and prepare for the Treasury demand, with deceptive information as to its extent."

An attempt has been made to consider these drafts, for two millions three hundred thousand dollars, as mere transfers, as directions, from the Treasury Department to the Bank, to send a particular sum of public money from one place to another, for the public, not private use, as drafts designed to change the *position*, not the *custody* of the public money. But the Secretary, in his report to the Senate of the 30th November, has him-

\* Speech of Mr. Binney.

self, put the true impress upon the transaction; declaring that, "he has transferred money, in some instances, from the Bank of the United States, to the selected banks, in order to enable them to defend the community against the unwarrantable attempts (*attempts never made, every Bank bearing testimony to the unexpected forbearance of the Bank*) of the Bank of the United States, to produce a state of general embarrassment and distress."

Defender of the community! Protector of the people! When and how were attributes like these given to the Secretary of the Treasury? By what law? If the administration can, under pretence of protecting the people, assume, unrebuked, unpunished, to loan to individuals or corporate institutions millions of their money, it will not be long before we shall have given, the protection of the people, as vouchers for the illegal expenditure of millions. Well may it be said "that the inevitable tendency of power is its own enlargement." These drafts, informally and illegally framed and sanctioned, for money lawfully deposited in the treasury, were given, secretly given, to cashiers, to be used at their discretion, upon contingencies affecting their institutions, of which they, alone, were judges, and which had no relation to the public service. What security existed against their abuse? What pledge against their illegal conversion to the use of the cashiers themselves? Had such conversion been made, no claim would have existed against the Banks under their respective contracts, or against the sureties on the cashiers' bonds. The banks would not have been liable for money which they had not received, and the condition of the cashiers' bonds embrace no such trust. Can it be for an instant doubted, that soulless institutions, whose constituency relieves them in a great measure from moral obligation, whose spring of action is pecuniary interest, receiving favours like these, the gratuitous loan of millions to defend their credit, will not be the ready, the remorseless instruments of the power that fosters them? Can it be, that such institutions will not combine to make themselves, their stockholders, and their debtors, the partizans, the creatures of the administration, adding hundreds of thousands to the army of fifty thousand mercenaries which the newly established tenure of office has supplied to the Executive? It matters not to our view of the case, that a portion, only, of these drafts were used, and the remainder returned to the treasury.

So conscious, indeed, has the party become, that this influence over the State banks will not be tolerated by the country, that the Committee of Ways and Means, now, propose, in legitimating the use of these Banks, to provide against this abuse; prohibiting the Secretary of the Treasury, "during the session of Con-

gress, to dismiss from the service of the Treasury any Bank of deposit, without having first obtained the sanction and approbation of Congress; and if during the recess of Congress any Bank shall fail or refuse to comply with the terms and conditions upon which it has been employed, or if the Secretary shall deem it necessary, during the recess of Congress, in order to protect the public interest, to discontinue any Bank as a public depository, he is to be authorized to issue such order, temporarily, but required, at the commencement of the next session to report to Congress, the reason and evidence upon which he has ordered such discontinuance, reserving to Congress the right to approve or reverse such order." This does but embody the spirit of the provision, in the charter of the Bank of the United States, giving power to the Secretary to remove the deposits from that institution; and, surely, if that provision have been mocked and disregarded, although its sense was as visible as if written with a "pencil of phosphorus," we cannot have any guarantee from words, mere words, that the prescribed duty will be fulfilled. When the spirit of the law is contemned, its words are but a *caput mortuum*. But reasons and evidence! Why, after it has been "announced from a source high in the confidence of the administration, that the removal of the deposits was a measure so manifestly wrong, and had been productive of consequences so injurious, that the error would have been redressed by a vote of two-thirds of each House, if it had not been discussed as a party question," what faith is to be given to reasons and evidence? Any collocation of ideas, pertinent or impertinent, in juxta position or in chance medley, will stand for reasons; and any statement of facts, true or simulated, will serve for evidence.

The law requires the deposits of the public moneys to be *made* in the Bank of the United States and its branches, unless the Secretary of the Treasury shall otherwise direct. When once *made*, there his authority, as conferred by the charter, ceases. He has no authority over them, whatever; except according to the provisions of the constitution and the general laws. The provision of the constitution attaches to them, which forbids any money to be drawn from the Treasury, unless in consequence of appropriations made by law. All the laws which forbid the transfer of moneys appropriated for one object, to be applied to another, likewise attach to it; and the Secretary of the Treasury has no lawful authority to draw money from its place of deposit, except for the purpose of making the payment to which it is appropriated.

The Secretary alleges that the charter confers upon him no new power. No new power? It was the power to dispense with law. How could he possess it before the law was enacted?

\* Speech of Mr. Chilton Allen.

It was a power to cancel a contract between the nation and the Bank. How could he possess it before the contract was made? And as he could not exercise it *before* the statute was enacted, so neither could he exercise it after the enactment of the statute, had it not been conferred by the statute itself; and he was bound to exercise it according to the provisions, and under the limitations prescribed by the statute. The limitation of his power was to give order that the deposits should *cease to be made* in the Bank and its branches; and for this he was required to give, as speedily as possibly, his reasons to Congress. His power was prospective over moneys to be deposited. When once deposited, he could draw them from their places of deposit only in consequence of appropriations made by law.

It is said that the power of removing the public moneys from one place of deposit to another, has always been exercised by the Secretary of the Treasury. This is a power, which no one doubts, of making remittances; incidental to the obligation of paying out the public moneys according to their respective appropriations; without which the public creditors could not be paid, and for which no law requires that the Secretary should assign to Congress any reason whatever. But such we have seen is not the nature of the present removal. That is a colourable transaction, for the purpose of loaning appropriated public moneys to brittle favourite banks, without charge of interest, while those very same banks were loaning to another department of the Government, money at an interest of five or six per cent.\*

The employment of the State banks as the substitute of the Bank of the United States, being, as we think, the end and aim of the Executive movement in the Treasury Department, we have given it a considerable portion of our attention. We now proceed to consider the Secretary's facts warranting the exercise of the power which he has, with as little of justice as of law, deduced for himself.

I. The charter of the Bank, the Secretary asserts, will expire on the 3d of March, 1836, and will not be renewed. Here are two very distinct propositions. The first is true, *sub modo*, only. Though the charter expires, for certain purposes, on that day, it survives for other purposes, and for the very purposes which the Secretary supposes it does not live to execute. For "notwithstanding the expiration of the term for which the said corporation is created, it shall be lawful to use the corporate name and style and capacity for the purpose of *suits for the final settlement and liquidation of the affairs and accounts of the corporation*, and for the sale and disposition of their estate, real, personal, and mixed; but not for any other purpose, or in any other manner whatsoever, nor for a period

\* Mr. Adams' Speech.

exceeding two years after the expiration of the said term of incorporation." [*Act 1816, Sec. 21.*] Consequently, there is no one operation which he wishes to compel the Bank, now, to perform, that it cannot most appropriately perform, in the additional two years. It may reduce its discounts in any ratio, circumstances may require, may bring in its notes, so fast as the holders consent, and may do all that it now does, but expand itself, after having closed or liquidated a transaction. It cannot make a new loan, but may continue, or settle and liquidate existing contracts, at pleasure.

But suppose the fact, to be unqualifiedly, as the Secretary states it, is it a reason to the government to remove the deposits? The views of expediency which the Secretary deems affirmatively conclusive, are: 1. That as several millions will probably remain in the Bank at the expiration of the charter, it would be attended with serious inconvenience if they were suddenly withdrawn, when its immense circulation is returning upon it, and its private deposits are being removed into other institutions. 2. That under such circumstances the ability of the Bank to make prompt payment to the government would be doubtful, even if their ultimate safety could be relied upon. 3. The sudden withdrawal or depreciation of its circulation, it being the principal medium of commerce with the people, before another sound and convenient currency could be substituted, would produce extensive evils in all classes of society. The superior credit of the notes of the Bank of the United States, being founded, solely, in their reception in all payments to the United States, will not outlive that quality which expires on the 3d of March, 1836; the outstanding notes of the Bank, losing this peculiar value, will be depreciated as the notes of the local banks, producing great distress when it would be too late to provide against the evil, by the substitution of a safe and sound currency. These considerations, says the Secretary, make the removal a question of *time* only. And to his choice of time he was induced by his faith in the second position above stated; namely, that the charter would not be renewed.

But the foregoing views, one and all, are unfounded. 1. The cessation of the right of the Bank to retain the deposits being known, the withdrawal would be fully provided for, even though they should have been at the greatest height of prior accumulation. But with the inconsistency, which seems an essential constituent of the man, the Secretary has elsewhere shown, that there is a violent probability that in March, 1836, the public would have no balance in Bank. In his Annual Report of December, 1834, he comes to the conclusion, that *if the appropriations should be kept up to the amount authorized for the present year, the charge upon the Treasury in*



1835 would be more than it could probably meet. *But that the debt having then been entirely paid, if a guarded rule of appropriation be at once commenced, there will be no difficulty in bringing down the expenditure without injury to the public service.*" Again he says, "*unless the revenue to arise (under the new Tariff Act) should hereafter be more productive than is anticipated, it will be necessary in two years from this time to impose duties on articles that are now free, in order to meet the current expenses of the government.*"

The existence, then, of the several millions in the Treasury in March, 1836, is dependent upon the future action of Congress, and could not constitute a motive for the removal of the Deposites in October, 1833.

2. The ability of the Bank to meet its engagements of every character, was, at the instant when the Secretary expressed his doubts, unquestionable—nay, unquestioned by himself. Such ability was admitted by all. Its accumulation of specie exceeded ten, millions; and though the natural result of its business, was deemed by the administration and the party as the cause of deep reproach. The official reports of the Secretary prove, that the Bank is entirely able to pay *deposits—debts—everything—and have a large surplus*. Sound reasoning and experience alike expose the groundlessness of the Secretary's apprehension. A bank with such resources as this is admitted to have, increases in strength from the moment she attains the term of her charter; because her capital is then returned to her. Other banks may then assist, by their expansion, the liquidation of her debts, safely, to a considerable extent, as she has not, or having, cannot exercise the power to distress them, without encountering effectual resistance in public opinion. "To ask of the State banks, what it must distress them to give, and what is unnecessary to the United States Bank for operations then discontinued, would be as idle in her as the apprehension of it is in others. It cannot occur. There must be a reasonable arrangement between the United States Bank and all the State banks who assist in absorbing her loans, to prevent or mitigate the distress which the withdrawal of a large capital would otherwise occasion. This, therefore, is the moment when the Bank of the United States will have the greatest power for her own protection, without having it for the annoyance of the State banks; and unless there is a general crash, which will make deposits unsafe every where, they will be as safe in the Bank of the United States as they can be any where."\*

3. That the sudden withdrawal of the whole circulation of the Bank, nay, any considerable withdrawal of that circulation, must be productive of great evils, is as indubitable, as that the presence of that circulation is a blessing. That withdrawal, if it

\* Mr. Binney's Speech.

take place, will be the *fault*, the *crime* of the administration. Still, there is no necessity to make it more sudden, or oppressive, than is inevitable. Some of the remarks we have made under the last head are applicable to this. In the execution of their duty to the stockholders, the directors, will close their concerns as rapidly as their interest will permit. But that interest will prevent them from recalling their loans and issues with haste, which must extinguish the debts with the solvency of the debtors. Unhappily, however much reason we have to dread, on the score of the soundness and safety of the currency, and the preservation of public prosperity, there is little fear of there being State banks in abundance to absorb the loans discontinued by the Bank of the United States. The experience derived from the closing the first Bank of the United States, assures us of this, whilst it shows the practicability of safely winding up the concerns of the present.

The suggestion of the depreciation of the notes of the Bank, is wholly without support. If the notes are to depreciate, because they will be paid on presentation, because the quantity in circulation will be daily diminished, because the residue outstanding will be of increased value; and, because, unless Congress shall pass a law to the contrary, the public guarantee will continue, then, but not otherwise, the Secretary's fears may prove true. The Secretary has erred, even as to the matter of the guarantee; declaring that, the obligation of the United States to receive the notes in payment, will expire on the third March, 1836, when the 16th section of the charter provides, that the notes of the "said corporation," shall be so receivable, *unless otherwise* directed by act of Congress. They will be notes of the said corporation, as much after the Charter expires as before.\*

Of the nature of the currency which was intended to be provided, we have already sufficiently spoken. The sound and safe currency is impossible; but the rotten and destructive currency, predicted by wisdom and experience, is with, and around us. And to avoid the pains of a tranquil, and natural death, at the appointed time, which will come when it must come, we have submitted ourselves to the torture, and are surely, and slowly dying; whilst cries and groans, are destined to render the air vocal, for at least two years to come.

Among other assumptions of the Secretary, is the spirit of prophecy. We have seen, that the spirit of truth has not attended him in other matters, and we may confidently hope that it is not with him in this. The prediction is, that the Bank will not be re-chartered; and for this, too, we have reasons more abundant than blackberries, and more worthless. We are told, that the charter will not be renewed:

\* Speech of Mr. Binney.

1. Because it has no claim to renewal, founded on the justice of Congress; the charter being an exclusive privilege, at the expense of the rest of the community, enjoyed for twenty years.

2. Because the charter is unconstitutional.

3. Because public opinion has decided against it.

1. Is the charter an exclusive privilege, at the expense of the rest of the community? We make a division of the question. To the first member, we answer, aye; to the second, no. The privileges of the charter, are however, no farther exclusive than are the privileges of every corporation, every social circle, every church or eleemosynary association, every possession of property. All who are qualified may become participants in the privileges of these States. At the commencement of the charter, not only was the stock open to all, but some thousand shares long solicited purchasers in vain. Since that period, the stock, has been continually changing hands. Yet the present stockholders have no peculiar claim for renewal of their charter, farther than, that they can, with experience and established relations, and a nation's confidence, best promote the public weal. The present stockholders would be no greater gainers than would be the stockholders of a new bank; most of them have paid much more for their stock than par, much more than it would now bring, and many, as much as the stock would at any time attain. The Bank did not go into operation until the commencement of the year 1817, and such were the losses during the first six years of its existence that its dividends were short of three and a half per cent per annum. The average dividend during thirteen and an half years was but four eighty-eighth hundredths per cent. per annum; and an annual dividend of about nine per cent, during the residue of the term of the charter (from 1832) is necessary to give the stockholders an average return of six per cent on their capital.\*

The exclusive privileges possessed by the Bank are indispensable to its useful existence, and form an objection, not so much against the renewal of its charter, as to the existence of any bank. But this is a matter not within the proper province of the Secretary. It is purely a question of legislative jurisdiction.

It is most certain, that these privileges have not been holden at the expense of the community. Up to this period the dividends of the Bank have not averaged six per cent. per annum. Whilst it has saved to the government, from forty to sixty millions by its operations, and to the people a sum almost incalculable in the equalization of exchange.

2. The question of the constitutionality of the charter ought to be at rest. Time, the acquiescence of the nation, reason,

\* Callatin on Banking, &c.

judicial authority, all have confirmed it; and were it not necessary to the completion of our purpose of giving a view of the "Bank Question" in all its phases, and had it not been, even within the last two months, strenuously denied in Congress by members known to represent the sentiments of the President and the administration, we would forbear to comment upon it. With Mr. Dallas we say, "In the administration of human affairs, there must be a period when discussion shall cease and decision shall become absolute. A diversity of opinion may honourably survive the contest; but upon the genuine principles of a representative government, the opinion of the majority alone can be carried into action. The judge who dissents from the majority of the bench, changes not his opinion, but performs his duty, when he confirms the judgment of the court, although it is contrary to his own convictions. An oath to support the constitution and the laws, is not therefore an oath to support them under all circumstances according to the opinion of the individual who takes it, but it is emphatically an oath to support them according to the interpretation of the legitimate authorities. For the erroneous decisions of a court of law, there is the redress of a censorial, as well as of an appellate, jurisdiction. Over an act, founded upon an exposition of the Constitution, made by the legislative department of the government, but alleged to be incorrect, we have seen the judicial department exercise a remedial power. And, even if all the departments, legislative, executive, and judicial, should concur in the exercise of a power which is either thought to transcend the constitutional trust, or to operate injuriously upon the community, the case is still within the reach of a competent control, through the medium of an amendment to the Constitution, upon the proposition, not only of Congress, but of the several States. When, therefore, we have marked the existence of a National Bank, for a period of, [*near forty years,*] with all the sanctions of the legislative, executive, and judicial authorities; when we have seen the dissolution of one institution, (*the re-establishment of another, and a loud and continued call for its preservation;*) when, under these circumstances, neither Congress nor the several States have resorted to the power of amendment; can it be deemed a violation of the right of private opinion, to consider the constitutionality of a National Bank as a question forever settled and at rest?"

This view has been enlarged and sustained, by the venerable and venerated James Madison, in his letter of the 25th June, 1831, to Mr. Charles J. Ingersol, from which we make the following extracts :—

"The charge of inconsistency between my objection to the constitutionality of

such a Bank in 1791, and my assent in 1817, turns on the question, how far legislative precedents, expounding the Constitution, ought to guide succeeding legislatures, and to overrule individual opinions.

"Some obscurity has been thrown over the question, by confounding it with the request due from one legislature, to laws passed by preceding legislatures. But the two cases are essentially different. A constitution, being derived from a superior authority, is to be expounded and obeyed, not controlled or varied, by the subordinate authority of a legislature. A law, on the other hand, resting on no higher authority than that possessed by every successive legislature, its expediency as well as its meaning is within the scope of the latter.

"The case in question has its true analogy in the obligation arising from judicial expositions of the law on succeeding judges; the constitution being a law to the legislator, as the law is a rule of decision to the judge.

"And why are judicial precedents, when formed on due discussion and consideration, and deliberately sanctioned by reviews and repetitions, regarded as of binding influence, or rather of authoritative force, in settling the meaning of a law? It must be answered, 1st, because it is a reasonable and established axiom, that the good of society requires that the rules of conduct of its members should be certain and known, which would not be the case if any judge, disregarding the decision of his predecessors, should vary the rule of law according to his individual interpretation of it. *Misera est servitus ubi jus est aut vagum aut incognitum.* 2d. Because an exposition of the law, publicly made, and repeatedly confirmed by the constituted authority, carries with it, by fair inference, the sanction of those who, having made the law through their legislative organ, appear, under such circumstances, to have determined its meaning through their judiciary organ.

"Can it be of less consequence that the meaning of a constitution should be fixed and known, than that the meaning of a law should be so? Can, indeed, a law be fixed in its meaning and operation, unless the Constitution be so? On the contrary, if a particular Legislature, differing in the construction of the Constitution, from a series of preceding constructions, proceed to act on that difference, they not only introduce uncertainty and instability in the constitution, but in the laws themselves; inasmuch as all laws preceding the new construction, and inconsistent with it, are not only annulled for the future, but virtually pronounced nullities from the beginning.

"But it is said that the legislator having sworn to support the constitution, must support it in his own construction of it, however different from that put on it by his predecessors, or whatever be the consequences of the construction. And is not the judge under the same oath to support the law? Yet, has it ever been supposed that he was required, or at liberty, to disregard all precedents, however solemnly repeated and regularly observed; and, by giving effect to his own abstract and individual opinions, to disturb the established course of practice in the business of the community? Has the wisest and most conscientious judge ever scrupled to acquiesce in decisions in which he has been overruled by the matured opinions of the majority of his colleagues; and subsequently to conform himself thereto, as to authoritative expositions of the law? And is it not reasonable to suppose that the same view of the official oath should be taken by a legislator, acting under the constitution, which is his guide, as is taken by a judge, acting under the law, which is his?

"There is in fact, and in common understanding, a necessity of regarding a course of practice, as above characterized, in the light of a legal rule of interpreting a law; and there is a like necessity of considering it a constitutional rule of interpreting a constitution.

"That there may be extraordinary and peculiar circumstances controlling the rule in both cases, may be admitted; but, with such exceptions, the rule will force itself on the practical judgment of the most ardent theorist. He will find it impossible to adhere to, and act officially upon, his solitary opinions, as to the meaning of the law or constitution, in opposition to a construction reduced to practice, during a reasonable period of time; more especially where no prospect existed of a change of construction by the public or its agents. And if a reasonable period of time, marked with the usual sanctions, would not bar the indivi-

dual prerogative, there could be no limitation to its exercise, although the danger of error must increase with the increasing oblivion of explanatory circumstances, and with the continual changes in the import of words and phrases.

"Let it then be left to the decision of every intelligent and candid judge, which, on the whole, is most to be relied on, for the true and safe construction of a constitution: that which has the uniform sanction of successive legislative bodies, through a period of years, and under the varied ascendancy of parties; or that which depends upon the opinions of every new Legislature, heated as it may be by the spirit of party, eager in the pursuit of some favourite object, or led astray by the eloquence and address of popular statesmen, themselves, perhaps, under the influence of the same misleading causes."

Of the derivation of the constitutional power of Congress, an able and satisfactory statement is given by Mr. Gallatin, in his *Essay upon Banks and Currency*, of which the following is a synopsis.

It was the object of the Constitution to consolidate the United States into one nation, so far as regarded their foreign relations, and some few subjects essential to the prosperity of the people. Of these were the regulations of commerce among the several States, and the control over the monetary system of the country.

Power over the last mentioned object is of primary importance. It was on a deliberate view of the subject, that it was confirmed and enlarged by the Constitution, and the individual States excluded from participation in it with the General Government. To assure this power, the Constitution provided that, "The Congress shall have power to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the securities and current coin of the United States; to make all laws which shall be *necessary and proper* for carrying into execution the foregoing powers;" and that "no State shall coin money, emit bills of credit, or make any thing but gold and silver a tender in payment of debts." This power over the monetary system is essential to the execution of other powers given in the first paragraph of the 8th section of the first article of the Constitution, "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States;" with the restrictive provision, that "all duties, imposts and excises, shall be uniform throughout the United States."

By the admission of all parties, the just construction of the words "to provide for the common defence and general welfare," gives power to Congress to lay *duties and taxes* for the general welfare of the United States without other limitation than, 1st. That duties, imports and excises should be uniform throughout the United States; 2nd. That no direct tax should be laid unless in proportion to the census; and 3d. That no duty should be laid on exports.

It has been lately contended by distinguished citizens, that the words "general welfare," refer only to powers expressly

vested in Congress by the Constitution; or in other words, that the power to lay duties and taxes can be exercised only for the purpose of carrying into effect some of those specific powers. Admitting this for the sake of argument, the objection does not apply to cases where the object, in reference to which the duty or tax is laid, is clearly within the powers of the General Government.

Congress has therefore the power to lay stamp duties on notes of every description, whether of individuals or banks, to such amount and in such manner as may be necessary to effect its object; whether that be to provide generally for the public welfare, or to execute the provisions of the Constitution, giving to Congress exclusively the control over the monetary system, and more particularly those which imply the necessity of a uniform currency. In the exercise of this power, it may lay a duty on small notes, which would prevent their circulation, would convert all banks into banks of discount and deposit only, annihilate the paper currency, and render a bank of the United States unnecessary in reference to that object. But if this last measure prove pernicious or impracticable, Congress must resort to other means. The Bank of the United States was established for this express purpose.

The power to establish the Bank is not derived from the clause of the Constitution referring to the "general welfare;" but from that which gives Congress "power to make all laws which shall be *necessary and proper* for carrying into execution the powers given by the Constitution, and thereby vested in the Government of the United States, or in any department or office thereof.—[*Art. 1. see 8 cl. 10.*] It becomes, therefore, the first object to determine the meaning of the words "*necessary and proper*" in that clause.

The word "necessary" must not be taken in its strict sense, as if it stood alone. It is connected with, and qualified by the word "proper." This last word implies, that what is called necessary, may be proper or improper. Hence the words "laws necessary and proper," are not intended in the most limited sense, implying absolute impossibility of effecting the object without the law; but mean such laws as are fairly intended, and highly useful and important for that purpose.

That such is the fair and uniform construction of the Constitution, without which it could not have been carried into effect, is apparent from many laws; particularly from that most general and important law, enacted from the first organization of the government, from a provision which has been retained in it through all its modifications—the law to lay and collect duties on imports. This requires a variety of oaths; among others that of the importers or consignees, relating to the quantity and

value as stated in their invoices. Yet such oaths are not *absolutely* necessary, because the duties, as in France, might be efficiently collected without them, by means of the appraisement of the merchandize.

There are several means of carrying into effect any of the powers expressly defined in the Constitution. No one of these can be strictly *necessary*, whilst any one of the remainder may be used. But if we object to each, as not so necessary, no mean can be used. Thus the restriction on the issues of State Banks may be effected by a stamp duty, or by a Bank of the United States. But, if these be the sole means, and we refuse both, because neither is indispensable, the object will be unattainable.

But, to render such means necessary and proper, they should not only be highly useful and essential, for effecting a power vested in Congress, but should tend clearly and *bona fide* to their avowed object—not be colourably auxiliary to one power, when designed to effect another. This was the ground of opposition to the first Bank. Experience had not then taught the efficiency of the agency of a Bank to regulate the currency, nor its utility in aiding the operations of the government. Indeed, there were but three banks in the country, and little could be known of their nature and effects. The friends of the United States Bank, therefore, did not put the necessity of its creation upon the regulation of the currency, but claimed it as an incident to the powers of regulating commerce, of collecting the revenue, of the safe keeping of public moneys, and generally, of carrying on the operations of the Treasury. Its opponents did not believe these to be the real purposes, but supposed that it was designed for the consolidation of a monied aristocracy, and to further the views at that time ascribed to a certain party and its assumed leader. These erroneous opinions have passed away, but they have left impressions which may still affect public opinion in relation to the constitutionality of the Bank.

It is now universally admitted that the use of banks is indispensable to the government. But against all experience, it is insisted, that the operations of the Treasury and the regulation of the currency may be effected with equal facility and safety through the State Banks alone, as through a Bank of the United States; and on that ground the constitutionality of the latter is denied. To admit, however, that State Banks are necessary to the operations of the government, is an abandonment of the question. To make and to use, or to make and to hire, must require the same power in this case, and be either both constitutional, or both equally unconstitutional; except that, every consideration of propriety and expediency and convenience, requires that Congress should make a Bank, which will suit its own purposes, answer its own ends, and be subject to



its own control, rather than use other Banks, which were not created for any such purpose, are not suited to it, and over which Congress can exercise no supervision. The power in either case to use a bank, can be derived only from the fact, that it is necessary and proper for carrying into effect the powers granted by the Constitution. The General Government is not made by the Constitution to depend, for the execution of its powers, on the uncertain aid of institutions created by other authorities and independent of its control. It is expressly authorized to carry those powers into effect by its own means, by passing the laws necessary and proper for that purpose, and in this instance by its own Bank.

But it is not on the useful agency of the Bank in treasury operations that its constitutionality is now mainly placed. The States, though forbidden by the Constitution to issue bills of credit, have, to all intents and purposes, so done, through the agency of the banks, and the notes of these banks produce the very effect the Constitution intended to prevent by the prohibition. The injustice to individuals, the embarrassments of government, the depreciation of the currency, its want of uniformity, the moral necessity imposed on the community, either to receive the unsound currency, or to suspend business transactions, all the evils consequent on the suspension of specie payments have been as great, if not greater, than those which might have flowed from a paper currency, issued directly by State authority.

We have already adverted to several provisions of the Constitution which give Congress the right and impose the duty to provide a remedy; but there is another, deserving special consideration. Notwithstanding the suspension of specie payments in Great Britain, the Bank of England, by its notes, though fluctuating and depreciated, furnished a currency which was uniform throughout the kingdom. But such we have seen was not the case with the currency supplied here by the State banks. It was not only depreciated, but multifarious. It is specially provided by the Constitution of the United States, 1. That all duties, imposts and excises shall be uniform throughout the United States; and, 2. That Representatives and direct taxes shall be apportioned among the several States, according to their respective population. Both these just provisions are violated when currencies, of different values in the several States, prevail. Upon this ground, alone, Congress would be obliged to provide means for giving effect to these constitutional provisions. The uniformity of taxes of every nature is an essential and fundamental principle of the Constitution and our political association. That uniformity depends on the uniformity of the currency. Therefore, laws to effect this are "necessary and proper," in the strictest sense of the words. But there are two means only

to attain the object, a metallic or a uniform paper currency. The one may be possible, but it is difficult of attainment, and if attainable, inexpedient; because it involves the destruction of all the State banks and the established commercial system. The other is prepared to our hands, and we know, from long and various experience, will insure a sound and uniform currency; checking and regulating the greater part which it does not itself supply.

3. We are now to examine the third reason of the Secretary, for believing that the charter of the Bank will not be renewed; which is, that public opinion had pronounced against the Bank in the result of the Presidential election. In his cabinet communication of 18th September, 1833, the President avers, that his election was put upon the question of the recharter. "Can it now be said," he exclaims, "that the question of a recharter of the Bank was not decided at the election which ensued? *Had the veto been equivocal, or had it not covered the whole ground*—if it had merely taken exceptions to the details of the bill, or to the time of its passage—if it had not met the whole ground of constitutionality and expediency, then there might have been some plausibility for the allegation that the question was not decided by the people. It was to compel the President to take his stand, that the question was brought forward at that particular time. He met the challenge, willingly, took the position into which his adversaries sought to force him, and frankly declared his unalterable opposition to the Bank, as being both unconstitutional and inexpedient."

"On that ground the case was argued to the people. And now that the people have sustained the President, notwithstanding the *influence and power which was brought to bear upon him*, it is too late, he confidently thinks, to say that the question has not been decided. Whatever may be the opinion of others, the President considers his re-election as a decision of the people against the Bank."

In the concluding paragraph of his veto message, he said:

"I have now done my duty to my country. If sustained by my fellow citizens, I shall be grateful and happy; if not, I shall find in the motives which impel me, ample grounds for contentment and peace. He was sustained by a just people, and he desires to evince his gratitude by carrying into effect their decision, so far as it depends upon him."

The Secretary echoes these declarations thus: "The question of the renewal of the charter was introduced into the election by the corporation itself. Its voluntary application to Congress for the renewal of its charter four years before it expired, and upon the eve of the election of President, was understood on all sides, as bringing forward the question for incidental deci-

sion, at the then approaching election. It was, accordingly, argued, on both sides, before the tribunal of the people, and their verdict pronounced against the Bank, by the election of the candidate who was known to have been always inflexibly opposed to it."

We have made these extracts for the double purpose of controverting and disproving the allegations, and of rebuking the political heresy which they contain. We have, elsewhere, shown, that the President, prior to his cabinet communication, had, at no time, met the whole ground of constitutionality and expediency—that the veto was not equivocal, inasmuch as it declared, that the Bank of the United States was convenient for the government, and useful for the people; that the President was impressed with the belief, *not* that a Bank of the United States was unconstitutional and inexpedient, but that *some* of the powers and privileges of the *EXISTING* Bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, "*and that, had the Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed.*" Without comment upon the arrogance of the intimation, that the *Executive* would furnish the *Legislature* a plan for the regulation of the finances of the country—a matter exclusively pertaining to the latter, and the ignorance which the suggestion displays of the relative rights and obligations of the executive and legislative branches of the government, we ask whether this naked prevarication is not at once a mockery of the people, and a disgrace to the country?

"But what part of the charter, or of any law of Congress, authorises the Secretary to communicate such a reason to the House? Where is the warrant for the Secretary's instructing Congress as to the decision of the people upon a matter of future legislation? By what channel does the Secretary maintain an intercourse with the people that is not open to their representatives? How does the Secretary know any thing as to the wishes of the people, which the representatives of the people do not better know themselves? The communication of such a reason to the representatives of freemen, who are themselves freemen, is without a precedent in the history of this or any other representative Government. The alleged fact is, moreover, an assumption, and a mere assumption, without proof, and without the means of proof. It is a political inference which the people of this country will never sustain, until they are prepared to say that the election of a President is not the result of a preference founded upon his general qualifications, opinions, and actions, but is an adoption and ratification of his single will to any extent that he has at any time declared it, and even when he may have declared it in contrary directions at different times.

The constitutionality and expediency of a Bank of the United States, was not put before the tribunal of the people, nor did they understand that they were required to judge such a question. We appeal to their representatives in either House of Congress.

Mr. Clay, of the Senate, replies :

"In the canvass which ensued, it was boldly asserted, by the partizans of the President, that he was not opposed to a Bank of the United States, nor to the existing Bank with proper amendments. They maintained, at least wherever those friendly to a National Bank were in the majority, that his re-election would be followed by a recharter of the Bank with proper amendments. They dwelt, it is true, with great earnestness upon his objections to the Bank, as at present modified, and especially to the pernicious influence of foreigners holding stock in it; but they, nevertheless, contended, that these objections would be cured, if he was re-elected, and the Bank sustained. I appeal to the whole Senate, to my colleague, to the people of Kentucky, and especially, to the citizens of the city of Louisville, for the correctness of this statement."—[Speech 26 & 30th Dec. 1833.]

Mr. Southard responds :

"Due regard was observed not to close up the question. For we are assured, that after the Veto, 'a general discussion will take place, eliciting new, and settling important principles: and a new Congress, elected in the midst of such discussions, and furnishing an equal representation of the people, according to the last census, will bear to the Capitol, the verdict of public opinion, and, I doubt not, bring this question to a satisfactory result.' What Congress was to bear this verdict to the Capitol? The present—that now in actual session, in that very Capitol—members *elected amidst those discussions; of which, I am one!* We were to bear the verdict! Had the Secretary heard it when he acted? Did the Executive wait to hear it? How did they know what we should say? How know, that a majority would not be of the opinion, that the Bank ought to be rechartered? Or that, even two-thirds might not be found to oppose on this point, the Executive will, should that will resist their views in managing their constitutional guardianship over the Treasury? Could they not wait sixty days for that verdict, for which they had promised to wait? Was the country on the brink of ruin, sliding down the precipice into the gulph of irretrievable bankruptcy, that its drowning honour and perishing fortunes must be thus rudely rescued? That message was a solemn promise, by the Executive, to let this question be settled by Congress and to submit to it. What else can the words mean, but that, the people would consider the subject, and their representatives decide it? Did the President intend to trifle with the people? To profess regard for their opinions, as expressed through Congress, and yet to scorn those opinions by his actions? Was he giving out Delphic responses? Did he palter with us in a double sense? No, sir, he meant, *then*, what he said, however ill the promise has been kept, under the influence of those who have surrounded him. The people so understood—they so believed. It was to be tested, whether, *without new arguments or new facts*, legislative assemblies, chambers of commerce, and the great majority of the people of these States, had changed their opinions upon the new lights, which subservience to party, and devotion to men have afforded? Nay, it was even reasonable to suppose, that the President himself *might* yield his official opinions to the deliberate, well-considered opinions of a majority of the people, and to permit their judgments to govern in this land of majorities, and under institutions which have so long sanctioned the existence of such a fiscal agent. It had been so before. Mr. Madison had yielded his doubts, upon principles, and for reasons which do equal honour to his head and heart, and which are well developed in his letter of 25th June, 1831."

And Mr. Wilkins—to be sure, the mutable nature of this gentleman's opinions may detract somewhat from the force of his testimony—but as, like the helianthus, his changeful course always looks towards the sun above the horizon, and as he is the zealous worshipper of the luminary, we may use his evi-

dence with confidence, and with a compliment to the sincerity which most notably puts the President in the wrong, and reproves the Secretary most ungently for overlooking the Act of Congress, and directing his eye to political signs.

"A bill," he says, "had been introduced into Congress for the renewal of the Bank charter, and had been lost. The same Chief Magistrate, by whose veto that measure had been defeated, was subsequently re-elected by the people. And I will take occasion to observe, that I do not put the common construction upon that political event; and in the inference I draw from it, *I differ in some degree from the President and Secretary of the Treasury. I do not think that result turned upon the question of the recharter of the Bank; nor was it a popular decision of that inquiry.* I believe the people in that Presidential election looked beyond the Bank; and (without meaning any indelicacy towards his distinguished competitor,) were governed by higher and more interesting considerations in the re-election of General Jackson. *Thousands of voters threw their weight on the side of the successful candidate, who would vote for a National Bank to-morrow.*"

Has the gentleman who uses this unkind frankness no fear of the pains and penalties provided for "*refractory subordinates,*" whether of the official or party hierarchy?

Let us now seek the opinions of the immediate delegates of the people, in the House of Representatives.

Mr. Moore, of Va., says:

"I cannot perceive the least propriety in the Secretary introducing topics of this kind into his report: nor do I know by whom he was constituted the judge of the motives which governed the people in making choice of a chief magistrate; but I am certain, he could not have come to a more erroneous conclusion, than he has done. Every gentleman here knows, that General Jackson would have been elected whether he was for or against the Bank. The only hope entertained by his opponents of preventing his re-election, was dependent upon his vetoing the Bank charter. All admitted if he approved the charter, he would be elected by a great majority. He would have been elected if he had chartered forty banks, by even a larger vote than he received. The chartering the Bank was not the only question upon which the Presidential election turned: on the contrary, it is probable that more than one half of those who voted for the present Chief Magistrate were, at that time, in favour of rechartering the Bank."

And Mr. Wise, also of Virginia, who reports himself, as we have already noticed, "most distinctly" a friend of the administration, and an "honest man," thus expresses his sentiments to the same purpose:

"Sir, I am, undisguisedly and decidedly, a friend to the constitutional power of Congress to incorporate a Bank of the United States *on proper principles*; and I am more than ever convinced, that such an institution, properly organized, is absolutely necessary to conduct, not only the commercial operations of the people, but the financial operations of the government. And there is no subject on which I differ more widely with the President and with the Secretary, than on this important subject. I, for one, once did think that the President would sanction such a charter as can be made congenial to, and consistent with the Constitution. On all proper occasions when using my feeble efforts to elect him, I confidently declared this belief to many of the people whom I represent."

Mr. Chilton Allen, whom we had before occasion to quote, with much satisfaction, testifies, thus, to the same effect:

"But, Sir, we are told that this nation has decided against the existence of a National Bank, and the second election of General Jackson to the Presidency is referred to, to prove that fact. I deny that the election of General Jackson either proves, or conduces to prove, that the people of the United States are opposed to a National Bank. General Jackson certainly went before the people, at the last election, as a Bank man. It is true, in his veto message he made known his objections to certain parts of the existing Bank charter; but it is equally true that, in the same message, he spoke of a United States Bank as a useful institution, and said that a charter for one could be made compatible with the Constitution; and that, if he had been called on, he would have furnished such a charter. It is equally true that Mr. M'Lane, while acting as his Secretary of the Treasury, under his supervision, in his annual report to the first session of the last Congress, did maintain, most ably and clearly, that the National Bank was an Institution necessary both to the administration of the affairs of the Treasury and the preservation of the currency. Then, Sir, I undertake to say that the Jackson party, in every county and district in the United States, presented General Jackson to the people, upon the authority of his veto message and Mr. M'Lane's report, as friendly to a United States Bank, properly modified. I appeal to every member now in this House for the truth of this statement. The people were every where told that General Jackson vetoed the Bank bill because it was brought before him too soon, for electioneering purposes, and because he disapproved certain modifications of the charter; but that he would, after his election, give his approbation to a National Bank properly guarded. A gentleman from Virginia, (Mr. Wise,) said, the other day, that this was the view presented to the people of his district before the Presidential election. I know it was the view taken in Kentucky. And I say, upon the authority of the public press, and the veto message, and Mr. M'Lane's report, that this was the manner in which General Jackson was presented to the people of the United States at the last Presidential election. If I am mistaken in regard to any part of the country, I hope the gentleman who knows the fact will correct me. General Jackson has been deceived in his information on this subject; and if he will inquire of the members of the present Congress, he will be informed that he was elected as a Bank man. But, Sir, if it had been known that General Jackson was opposed to a National Bank in any form, his election would not prove that the people were opposed to a Bank; for the fact is, that his popularity was so overshadowing, that he could have been elected on any side of any question.

"In coming to a conclusion in regard to the matured sense of the American people, on the subject of a National Bank, I will rely not upon the election of any particular man, (when it is a fact of such general notoriety that the election did not turn upon the Bank question,) but will appeal to the history of forty years, during which a National Bank has existed in this country, and, during which protracted period, met with the public support, attested by all the modes of ratification that can flow from the general acquiescence—from legislative sanction, judicial confirmation, and executive approval."

Abundant evidence has been, and much more might be, adduced, to show that the question of the Bank was not on trial before the people at the late Presidential election. But if we admit the issue to have been formed, the verdict must be gathered, not from the result of the Presidential election alone, but from the return of the representatives of the people, mediate and immediate. The majority of the Senate in favour of the Bank has been increased, and the results in the lower house, not against the measure, are thus exhibited by Mr. J. Q. Adams, with his accustomed ability:

"When the President of the United States said, that if the last Congress had continued in session one week longer, the Bank would, by corrupt means, have

procured a recharter by majorities of two-thirds, in both Houses of Congress, to what portion of the members of both Houses did this honourable testimonial of his confidence specially apply? At the preceding session of the same Congress, a bill to recharter the Bank had passed the Senate by a vote of 28 to 20. It had passed in the House by a vote of 107 to 85, and this was immediately after an investigation of the affairs of the Bank by a committee of the House, who went to Philadelphia for that express purpose, and every member of that committee is also a member of this House. Of the 107 members of the House who voted for that recharter, 50 are members of this House; of the 85 members who voted against it, 41 are members of the present House; and there is in this proportion, on both sides, a coincidence so remarkable, that I cannot help inviting to it the attention of the House. It has been assumed by the President of the United States, and repeated by the Secretary of the Treasury, and by the report of the Committee of Ways and Means, that the re-election of the President, after his veto upon this very bill to recharter the Bank, is of itself equivalent to a verdict of the people against the Bank. Mr. Speaker, I shall not inquire what sort of an estimate this position supposes the people to have formed of all the other measures of a four years' administration. It seems to me an admission, that in all the rest of his measures, the people saw and felt nothing, which could have secured to him his re-election, but that this crushing of the monster was not only meritorious in itself, but sufficient to outweigh a mass of *demerit*, in the whole system of the administration besides, which would have forfeited the claim to that approbation of the people of which the result of the election was the test. Sir, if the President of the United States is willing that his reputation as a statesman at the head of this Union, should go down upon the records of this age, to the admiration of after times, on the single and solitary foundation of his having destroyed the Bank of the United States, I can have no possible objection to his being gratified. He will suffer no injustice by having that measure applied to his foot as the standard, and then inferring from that the whole man, "*Ex pede Herculem*," all the rest will be perfectly congenial with it; and such I have no doubt will be the judgment of posterity. But, Sir, if his re-election can, with any pretence of reason, be considered as an evidence of the sentence of condemnation by the people, *against the Bank*, then I say that the re-election of the members of the House, who voted for and against that bill to recharter the Bank, is evidence far more conclusive and unequivocal of the sentiments of the people with regard to the Bank and the recharter, than the Presidential election was or could be. Now, Sir, every member of this House who voted for or against that bill to recharter the Bank, has passed through that ordeal of re-election since he gave that vote; and it so happens that the proportion of re-elected members of those who voted for and against the recharter, is precisely the same. One member of the House who voted for the recharter, Philip Doddridge, of Virginia, we soon after followed, in melancholy procession, to the grave; and sure I am, that there is not a Virginian heart who hears me, but will respond to me when I say that *his* vote was no feeble testimonial of the purity of purpose with which every vote was given on that occasion, which now stands recorded in association with his. Had he lived and consented to serve, there can be no doubt that he would still have been one of us. There would then have been 51 re-elected members of 107 members who voted for the recharter; there are 41 of 85 who voted against it; and as 41 is to 85, so is 51 to 107. Sir, the doctrine of chances, and all the other elements which are mingled up in the process of electioneering throughout this whole Union, has not produced a variation from the proportion, to the amount of a single man; and what is the inference that I draw from this curious and extraordinary arithmetical demonstration? Why, Sir, that all the members on both sides of the question, those who voted for and those who voted against the recharter, faithfully represented the sentiments of their respective constituents; and this result, so uniform, of the elections to this House throughout the whole Union, is of itself an honourable vindication of the integrity of its members, from the baseness imputed to them by the Chief Executive Magistrate.

"This vindication, it must also be observed, is more necessary to that portion of the members of the House who voted against the recharter, and were the devoted friends of the President and of his administration, than to the rest. It was

from the eighty-five members who voted *against* the recharter that the recruits of corruption must have been levied, to constitute, with the one hundred and seven who had already voted for the recharter, that majority of two-thirds which could have effected the recharter in defiance of the veto. Of the eighty-five names which stand thus recorded, twenty-one must have changed their votes from the negative to the affirmative before the recharter could have been accomplished by a majority of two-thirds; and this is what the President of the United States considered not only as practicable, but as certain to have been effected, by *corrupt* means, if the last session of Congress had continued one week longer. Mr. Speaker, I do not believe there was *one* member of the last Congress who voted against the rechartering of the Bank, who could have been induced to change his vote by corrupt means, had the President and Directors of the Bank been base enough to attempt the use of them. I believe this imputation to have been as unjust as it was dishonourable to both the parties implicated in it. That it was cruelly ungenerous towards the friends of the administration in this House, is my deliberate opinion; and, as I am well assured, there was not one of them justly obnoxious to the suspicion, so there is no one of them who can be considered exempted from it. And now, when we reflect that this defamatory and disgraceful suspicion, harboured or professed against his own friends, supporters, and adherents, was the real and efficient *cause*, (to call it a reason would be to shame the term,) but that it was the real *motive* for the removal of the deposits during the recess of Congress, and only two months before its meeting, what can we do but hide our heads for *shame*? Sir, one of the duties of the President of the United States—a duty as sacred as that to which he is bound by his official oath, is that of maintaining unsullied the honour of his country. But how could the President of the United States assert in the presence of any foreigner a claim to honourable principle or moral virtue, as attributes belonging to his countrymen, when he is the first to cast the indelible stigma upon them. ‘*Vale, venalis civitas, max peritura, si emptorem invenias*,’ was the prophetic curse of Jugurtha upon Rome, in the days of her deep corruption. If the imputations of the President of the United States, upon his own partizans and supporters, were true, our country would have already found a purchaser.”

But an executive appeal to the people, and the induction of power and authority for action upon their determination, real or suppositious, is a political heresy of the most alarming nature. If it be a principle of our political system, that an appeal lies from the Congress to the people, determinable at the instance, and upon the judgment, of the President, there is an authority unknown to, and above, the Constitution, and we are not only in the midst of revolution, but a revolution has been completed; our representative system is destroyed; the only elements of the body politic are broad democracy and a single headed Executive, and we have sunk into the preparatory stage of absolute despotism.

This very important portion of the Presidential assumptions, we think, has not been sufficiently regarded in the late debates of Congress. Mr. Clay and Southard have noticed it, but it has been best probed by Mr. Calhoun, whose great sensitiveness to constitutional violation, could not escape a shock.

“I would inquire,” he says, “by what authority the Secretary of the Treasury constitutes himself the organ of the People of the United States. He has the reputation of being an able lawyer; and can he be ignorant, that so long as the Constitution of the United States exists, the only organ of the people of these States, as far as the action of the General Government is concerned, are the several



departments legislative, executive and judicial ; which, acting within the respective limits assigned by the Constitution, have a right to pronounce, authoritatively, the voice of the people. A claim on the part of the executive to interpret, as the Secretary has done, the voice of the people, through any other channel, is to shake the foundation of our system. Has the Secretary forgotten, that, the last step to absolute power is this very assumption which he has claimed for that department. I am thus brought to allude to the extraordinary manifesto read by the President to the Cabinet, and which is so intimately connected with the point immediately under consideration. That document, though apparently addressed to the Cabinet, was clearly and manifestly intended as an appeal to the people of the United States, and opens a new and direct organ of communication, between the President and them, unknown to the laws. There are but two channels known to either, through which the President can communicate with the people—by messages to the two Houses of Congress, as expressly provided for by the Constitution, or by proclamation, setting forth the interpretations he places upon a law it has become his official duty to execute. Going beyond this is one amongst the alarming signs of the times, which portend the overthrow of the Constitution, and the approach of despotic power."

It is not, however, in the President's Address to the People that we see danger. It would be no great stretch of construction, to consider the communication which Mr. Calhoun calls a Manifesto, a Proclamation. It is the claiming and construing the response—the drawing from it authority for executive and legislative action, that violates the Constitution. Yet the mode of communication to the people, adopted by the President, is essentially vicious, as well as extraordinary, and can originate only in the desire to obtain influence in matters which are against or beyond the law.

The appeals of the President to the people are not only unconstitutional, but are otherwise of the most dangerous character—demagogical, anarchical, and inflammatory—they tend to excite the poor against the rich, and to produce the worst of civil wars. For what honest purpose can the executive declaim, in a message to Congress, such passages as the following; containing principles sound enough in the abstract, but rendered most mischievous by false application?

"It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth, cannot be produced by human institutions. In the full enjoyment of the gifts of heaven, and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law. *But when the laws undertake to add to these natural and just advantages, artificial distinctions, to grant titles, gratuities and exclusive privileges, to make the rich, richer, and the potent more powerful, the humble members of society, the farmers, mechanics, and labourers, who have neither the time nor the means of securing like favours to themselves, have a right to complain of the injustice of the government.*"

Again:

"Experience should teach us wisdom. *Most of the difficulties our government now encounters, and most of the dangers which impend over our own union, have sprung from an abandonment of the legitimate objects of government, by our na-*

tional legislation, and the adoption of such principles as are embodied in this Act, (Bill for renewal of Bank Charter.) Many of our rich men have not been content with equal protection and equal benefits; but have besought us to make them richer by act of Congress. By attempting to gratify their desires, we have, in the results of our legislation, arrayed section against section, interest against interest, and man against man, in a fearful commotion, which threatens to shake the foundations of our Union. It is time to pause in our career, to review our principles, and, if possible, to revive that devoted patriotism and spirit of compromise which distinguished the sages of our revolution, and the fathers of our Union. If we cannot, at once, in justice to interest vested under improvident legislation, make our government what it ought to be, we can at least take a stand against all new grants of monopolies and exclusive privileges, against any prostitution of our government, to the advancement of the few, at the expense of the many, and in favour of compromise and gradual reform in our code of laws and system of political economy."

What are these and the like extracts, which might be made from the executive documents, but attempts to inflame the people against the "*improvidence*" and "*prostitution*" of their representatives, and to incite them to seek protection and relief from the executive? What, but an effort to bring into dreadful activity the worst passions of our nature—to produce amongst, what the President has been pleased, in the most factious spirit, to call the "*humble members of society, the farmers, mechanics and labourers,*" unhappy discontents—and to array the poor against the rich? All must condemn the design, but none can fear its full success. Fortunately, for the peace of the States, these "*humble members of society*" comprise the great mass of the virtue, wealth and talent of the country, and are most obnoxious to the unfounded reproaches of the President. The appeals of the Executive are framed in the *cant* and *slang* adapted to the Fauxbourgs of Paris, and the purlieus of St. Giles; and were our people less enlightened, less happy and independent, they might have responded to the call of the Executive, "*to take a stand against all new grants of monopolies and exclusive privileges*—against any prostitution of our government to the advancement of the few at the expense of the many," in armed multitudes; and we might have seen the President "*re-forming our code of laws and system of political economy,*" by the forcible expulsion of Congress from the Capitol.

But even in our enlightened country, such appeals are not altogether without effect; though they assume, fortunately, a form less odious and noxious than in other states. We recognise their operation in the election of the majority of the House of Representatives, under *pledges* to support the Jackson administration—We recognise it, too, in that most shameful acquiescence by the majority, in the charge made by the President of corruption and corruptibility against them and their predecessors. But as the consummation of the President's design, depends upon the surrender of the peculiar and appropriate powers of Congress, the love of power, not less conspicuous in popular

bodies than in individuals, combined with a spirit of patriotism, may prevent its completion.

In speaking of the late executive documents, Mr. Wilde holds this appropriate language :

"The style and spirit of all these documents, from the veto message to the report of the committee, are in my judgment highly exceptionable. They have a general similitude. There is, throughout, too little calm reason; too little of sober and enlightened experience; and too much appeal to the more ignoble passions. Instead of clear-sighted, deep-searching and far-reaching sagacity, we have the incarnate spirit which practices on popular delusions, and has been the ruin of all republics. The *Demus* of the old Greek comedy, the *Agrarians* of Rome, the disciples of Spence in England, and the Jacobins in France, held similar language. It is the first time, however, I believe, that we have seen the chief executive magistrate of a free and intelligent people made "to talk and act Jack Cade."

Mr. Webster, too, has adverted to this topic with equal eloquence, force and truth.

"Sir, there is one other subject on which I wish to raise my voice. There is a topic, which I perceive is become the general war cry of party, on which I take the liberty to warn the country against delusion. Sir, the cry is to be raised, that this is a question between the poor and the rich. I know, Sir, it has been proclaimed that one thing was certain—that there was always a hatred from the poor to the rich; and that this hatred would support the late measures, and the putting down of the Bank. Sir, I will not be silent at the threatening of such a detestable fraud on public opinion. If but one man, or ten men in the nation, will hear my voice, I would still warn them against this attempted imposition.

"Mr. President, this is an eventful moment. On the great questions which occupy us, we all look for some decisive movement of public opinion. As I wish that movement to be free, intelligent, and unbiassed—the true manifestation of the public will—I desire to prepare the country for another assault, which I perceive is about to be made on popular prejudice—another attempt to obscure all distinct views of the public good—to overwhelm all patriotism, and all enlightened self-interest, by loud cries against false danger, and by exciting the passions of one class against another. I am not mistaken in the omen—I see the magazine whence the weapons of this warfare are to be drawn. I already hear the din of the hammering of arms, preparatory to the combat. They may be such arms, perhaps, as reason, and justice, and honest patriotism cannot resist. Every effort at resistance, it is possible, may be feeble and powerless; but, for one, I shall make an effort—an effort to be begun now, and to be carried on and continued, with untiring zeal, till the end of the contest comes.

"Sir, I see in those vehicles which carry to the people sentiments from high places, plain declarations that the present controversy is but a strife between one part of the community and another. I hear it boasted as the unfailing security, the solid ground never to be shaken, on which recent measures rest, *that the poor naturally hate the rich*. I know, that under the shade of the roofs of the Capitol, within the last twenty-four hours—among men sent here to devise means for the public safety and the public good—it has been vaunted forth, as matter of boast and triumph, that one cause existed, powerful enough to support every thing, and to defend every thing, and that was—the *natural hatred of the poor to the rich*.

"Sir, I pronounce the author of such sentiments to be guilty of attempting a detestable fraud on the community; a double fraud; a fraud which is to cheat men out of their property, and out of the earnings of their labour, by first cheating them out of their understandings.

"*The natural hatred of the poor to the rich?* Sir, it shall not be till the last moment of my existence—it shall be only when I am drawn to the verge of

oblivion—when I shall cease to have respect or affection for any thing on earth—that I will believe the people of the United States capable of being effectually deluded, cajoled, and *driven about in herds*, by such abominable frauds as this. If they shall sink to that point—if they so far cease to be men—thinking men, intelligent men—as to yield to such pretences and such clamor, they will be slaves already; slaves to their own passions—slaves to the fraud and knavery of pretended friends. They will deserve to be blotted out of all the records of freedom; they ought not to dishonour the cause of self-government, by attempting any longer to exercise it; they ought to keep their unworthy hands entirely off from the cause of republican liberty, if they are capable of being the victims of artifices so shallow—of tricks so stale, so threadbare, so often practised, so much worn out, on serfs and slaves.

“ ‘*The natural hatred of the poor against the rich!*’ ‘The danger of a monied aristocracy!’ ‘A power as great and dangerous as that resisted by the Revolution!’ ‘A call to a new Declaration of Independence!’

“Sir, I admonish the people against the objects of outcries like these. I admonish every industrious laborer in the country to be on his guard against such delusion. I tell him the attempt is to play off his passions against his interests, and to prevail on him, in the name of liberty, to destroy all the fruits of liberty; in the name of patriotism, to injure and afflict his country; and, in the name of his own independence, to destroy that very independence, and make him a beggar and a slave. Has he a dollar? He is advised to do that which will destroy half its value. Has he hands to labour? Let him rather fold them and set still than be pushed on, by fraud and artifice, to support measures which will render his labour useless and hopeless.”

Let us examine, for a single instant, into the nature of banking institutions, which faction now so much decries, but which are dangerous, only, in their excess, and which, with the power of steam locomotives, have carried us forward in an unparalleled progress of prosperity? Are they “grants of monopolies” and exclusive privileges as they have been characterized? The answer is most satisfactorily furnished by Mr. Cushing of Newburyport, in an able speech before the House of Representatives of Massachusetts.

“Sir, in the face of this partizan denunciation of the property of the country, I undertake to say, that, if any fact in political science be susceptible of demonstration, the inseparable connection of capital and of labour is that fact. Take the example of our banks, which are pure monied institutions. Who are chiefly interested in their welfare? Is it the rich? Is it, as we have heard so emphatically and confidently asserted here to-day, the rich capitalists? Do they employ the banks as engines for ‘grinding the poor,’ as it has been affirmed this morning? By no means.—Never was there a wilder delusion. Desiring, some time ago, of understanding the precise fact, I had recourse, in the first place, to the books of the Merchants’ Bank of Newburyport, to which I had right of access in capacity of director. Personally knowing every stockholder, his condition and his pursuits, I went carefully over the dividend-book of that bank, and I found that, of its six thousand shares, 3923 belonged to women and to public institutions, 1035 to working mechanics, and only 1042 to any description of capitalists. Struck with this result, I made a similar examination of the stock-book of the Mechanics’ Bank in the same town; and of the two thousand shares into which its capital is di-

vided, 946 belong to women and public institutions, 593 to working mechanics, and only 461 to capitalists. Not content with this, I pursued my inquiries in different banks of the city of Boston, and I found the general fact substantially the same, with this qualification; namely, that although in banks newly got up, a larger proportion of the stock occasionally belonged to capitalists, yet in a few years it all took the ordinary course of getting into the hands of women, public institutions and thrifty mechanics. I speak advisedly in this matter, on the strength of carefully prepared abstracts, of which I give a single example taken at mere hazard. Thus, the stock-book of the bank I have in mind exhibits this result: of ten thousand shares, 2834 are held by women, trustees and guardians; 2247 by public institutions; and only 1551 by capitalists; and the remaining 3360 by men of the industrious classes.

"The reason of this fact is plain enough to those who will use their eyes. Capitalists do not choose to pay to the State an excise upon their circulating cash capital; to pay the rent of a banking house; to pay the salaries of presidents and cashiers, for doing what they can do as well in their own persons; to be restricted to six per cent interest for their money; and to have their affairs scrutinized every day of the year by the public authorities of the State. No, they prefer to keep their money under their own controul, and to use it in buying blue books or cashing notes at an extra interest of one per cent per month. It is the mechanic, the solitary female, the minor child, the public institution of charity, which need, and find safe, investments for their money in banks; and their stock is not the property of great city merchants rolling in wealth; but is diffused in small sums all over the Commonwealth."

We might prosecute this matter much farther, and show that the business of the banks, like their stocks, belongs to the industry and enterprize of the country, not to capitalists; that labour and capital are inseparable in their utility; the latter, without the former, being as useless in the hands of the owner, as the precious metals in their primitive beds.

II. The second reason, in fact, alleged by the Secretary for removing the deposits, is the unwarrantable reduction by the Bank of its discounts, and consequent oppression of commerce. The specification is, that between 1st December 1832 and 2d August 1833, the Bank increased its discounts more than two and a-half millions of dollars; and, so far from preparing to wind up its affairs, although the election of the President had sealed its death-warrant, thus strove to compel the country to submit to the renewal of the charter, under the penalty of a currency suddenly deranged: that on the appointment of an agent to seek depositaries, and when the demands upon the traders by government were unusually large, by reason of the conjunction of the payments of the bond and cash duties, the Bank changed its course; and between the 2d of August and the 2d of October, curtailed its discounts four millions, whilst the public deposits were increased two and a half millions; that this reduction compelled the State banks also to curtail, and produced complaints of pressure from every quarter; so that, if the public moneys had continued to be deposited in the Bank

of the United States for two months longer, and the same system had been followed, a wide spread scene of bankruptcy and ruin must have ensued; that these causes left no alternative to the Secretary of the Treasury, but to remove the deposits, when, under other circumstances, he would have been disposed to direct the removal to take effect, at a distant day, so as to give Congress an opportunity of prescribing, in the mean time, the places of deposit, and of regulating the securities proper to be taken.

Now, will it be credited, that these allegations, said to be productive of such important results, are wholly untrue; that, consequently, the removal of the deposits was wholly unwarranted by them,—and that, supposing them true, the reason ascribed for hastening the removal is absolutely false. We use strong expressions; but none other befits the occasion.

1. The Bank of the United States did not, between the 2d of August and the 2d of October, voluntarily, curtail its discounts a single dollar.

2. Within that period, the State banks did not curtail their discounts.

3. The removal of the deposits, on the 1st of October, or sooner if practicable, was definitely fixed, on the 18th of September, and could not depend upon events subsequent to that day, which could not be known; and the design to prevent the action of Congress upon the question of removal, was, previously, distinctly avowed and invariably adhered to.

1. Our first asseveration is incontrovertibly proven, by the following exposition of the Bank operations, extracted from the Bank Report of 8th April, 1834.

To provide against the effects of the President's hostility against the Bank, demonstrated during the summer of 1833, the Bank resolved on the 13th August: 1. That, until further order, the amount of "bills discounted" should not be *increased* at the Bank and the several offices; 2. That bills of exchange, purchased, except at the five western offices, should not have more than ninety days to run; 3. That, the five western offices be instructed to purchase no bills of exchange except those payable in the Atlantic cities, nor having more than ninety days to run, or those which may be received in payment of existing debts to the Bank and the offices, and, then, not having more than four months to run.

This was the only measure deemed necessary by the Board, which was reluctant to diminish its business, or to distress the country. And the measure was merely followed out, by resolutions of the 1st of October:—1. To extend the third resolution of 13th August, from the five western to other distant offices. 2. That, all the other offices should likewise purchase

bills, only, on the Atlantic cities, New Orleans and Mobile; not having more than ninety days to run. 3. To increase the rates of buying bills of exchange. 4. To restrict the receipts of the State bank notes to those in the same places with the offices. 5. To collect the debts due by distant State banks.

So that, up to the 1st of October, 1833, no order had been given to curtail the loans. But all who are familiar with our commerce, know, that during the summer, in the interval between the old and the new crop, commercial operations, and the loans founded on them, subside. This, the Bank shows by a tabular view for the ten successive years.

The Secretary ought to have seen, from the statements furnished to him, that there were no "curtailments," and that the "oppressive system," which he stigmatized, was a voluntary reduction by the maturity of bills of exchange, drawn at New Orleans for \$2,037,099 53  
Of bills drawn at other places, 1,018,215 90  
And the voluntary diminution of local loans by one house, 1,010,830 72

---

4,066,146 15

On the 1st of October, the deposits were withdrawn. On the 8th the Bank directed, "that the committee on the offices be authorized to direct such gradual reduction in the amount and the time of the loans, at the respective offices, as may, in their judgment, be made, without inconvenience to the customers of the Bank, or the community." This authority has been executed in such a way as to accomplish its object with the least pressure upon the community; and the Bank sum up their operations, in the following manner:—

1st. That the Bank never directed any curtailment of its loans until the actual removal of the deposits.  
2d. That the only actual reduction of loans took place from the 1st of October to the 1st of December, when the loans were diminished, - - - - - \$5,641,098 26  
While at the same time, the public and private deposits were reduced, - - - - - 5,887,864 63  
3d. That from the 1st of December, 1833, to the 1st of April, 1834, the loans have not been reduced, but, on the contrary, have actually been increasing, and were greater on the 1st of April, 1834, than on the 1st of October, 1833, by - - - - - 353,712 95  
While, during that same period, the public deposits had decreased no less than - - - - - 2,239,393 89  
4th. That the total reduction of loans from the 1st of October to the 1st of April, was - - - - - 5,057,527 22  
While the public deposits had been reduced - - - - - \$6,935,568 84  
Private deposits, - - - - - 842,834 57  
Making an aggregate of - - - - - 7,778,403 41

being a reduction of loans less, by nearly three millions, than the reduction of deposits.

- 5th. That, so far from cramping the trade of the country, it has actually purchased, from the 1st of October to the 1st of April, of domestic and foreign bills of exchange, - 34,671,324 00
- 6th. That the State banks were permitted to be indebted to the Bank an average amount of - - - - 3,464,956 00

2. Our second averment is fully established by the state of the New York banks as represented in the report of the Union Committee prepared by Mr. Gallatin, showing that their discounts were greater on the 1st of October, 1833, than in January of the same year; and, the

Third, is proven, by the Cabinet Communication of the 18th of September, fixing the removal of the deposits for the 1st of October; and by the President's declaration to Mr. Duane, "that a State bank agency must be put into operation before the meeting of Congress."

There is yet another remarkable feature in this reason of the Secretary, another striking evidence of his want of reasons, and his consequent inconsistency; it is, that the very effect he intended to produce by the removal, and which, if the Bank had reduced its discounts would have been caused by the known intention of removal, is preferred, as the ground of complaint against the Bank, and as the justification of the removal. He complains of the Bank, because her ascribed action would have carried his design into effect; and he removes the deposits, because the Bank took measures to prevent the removal from distressing her.

Upon these facts and these reasons alone, the Secretary asserts, that he was obliged to remove the deposits without reference to the misconduct of the Bank. But, that there were other reasons for removal, growing out of the manner in which the affairs of the Bank have been managed, and its moneys applied, which would have made it his duty to withdraw the deposits at any period of the charter. He avers,

1. That, the Bank, as a public agent, and in consideration of the privileges and benefits bestowed by the act of incorporation, was bound to sacrifice its peculiar interests to the public welfare: That, for the protection of the public interests in the Bank, and to apprise the proper authorities of any misconduct on the part of the institution, five directors are appointed by the United States, from whom the Bank, in order to avoid accountability, designedly, concealed its affairs;—to this end violating the charter, by committing many of its most important transactions to a committee, denominated the "Exchange Committee," instead of conducting them by a Board of at least seven directors, at which the government directors might be present; and by the exclusion of the public directors from such committee, and from



a voice in its appointment; such appointment being made, solely, by the President of the Bank.

But there is no violation, whatever, of the charter in authorizing the President to appoint the Committee of Exchange, or in empowering the Committee to transact the business of exchange or of discount. The fourth fundamental law of the corporation enacts, that "not less than seven directors shall constitute a Board for the *transaction* of business." By *transaction* of business, the Secretary must understand, exclusively, the *execution* of business. But such is not the restricted meaning of the word here. 1. Because the requisition of seven directors to do the various business of the Bank, would render the execution of business impossible; not even a deposit could be received or paid without their presence. 2. The charter, by the use of a different term, in different places, shows that such is not the meaning of the word. 3. The word, in its proper sense, includes direction and execution. 4. The authority of the *Board* is *legislative*; and, though they can also *execute* any business the law prescribed, by themselves, or under the charter, must determine what part they will perform in person, and what remit to others. The *quorum* is appointed for the exercise of authority as a Board, for legislation and for the execution of the commands of the Board. 5. The body is, by the very name of its office, *directive* and not *executive*. This is clearly implied from the provision which gives to a substituted director the power to transact all the necessary business belonging to the office of President during the President's sickness, or necessary absence. The charter does not declare the business of the President; that is prescribed by the Board of Directors or the bye-laws and regulations of the Bank. If by the Board, they must have power to direct, and he, by virtue thereof, power to execute.

The power to make bye-laws and regulations for the Bank, not contrary to the constitution thereof, and the laws of the United States, is given by the charter; and it has been settled, for a century, that when a charter commits such power to the whole body of the corporation, they may delegate it to a select portion, which will then represent the whole body in their acts of legislation. Otherwise, when the power is given to a select body; for they cannot delegate their power to any other body. Now, the whole body of the corporation, the stockholders of the Bank, at a general meeting on the 6th of January, 1817, did delegate their powers of making bye-laws and regulations to the Board of Directors, and the laws and regulations made by them, are valid, either by virtue of their own charter authority as directors, or that delegated by the entire corporation.\*

Upon this principle, the board may authorize the President

\* Mr. Binney's Speech.

to appoint committees, a necessary power to every legislative body, or may authorise a committee to take order upon the purchase and sale of exchange, or for any other act of banking, where not prohibited by charter. The power exercised by the Committee of Exchange is not only usual in banking, but indispensable to the due management of the parent Bank. The question of expediency is, however, for the Board, when its legal quorum is present, to decide, and their decision has not been questioned by the stockholders as to the *right*. Though the discount of promissory notes is directed by the Board of Directors in person, there is no legal difference between discounts and exchanges; the Board may regulate the whole as it deems best for the Bank.

But the charge of concealment, as connected with the alleged violation of the charter, involves great considerations. It would seem to imply, general concealment, from omission to appoint any of the government directors upon the Committee of Exchange; and particular concealment, from authority given to the committee on the offices to modify the resolutions of the board for reducing the business of the Bank; also, from refusing to the government directors, a copy of the resolution indicating the course of the Bank, and which they thought should be transmitted to the Secretary of the Treasury.

The rights specially claimed by the government directors, are wholly unfounded. Their right to be members of any committee has no more legal support than the right of a member of the House of Representatives to be upon a committee appointed by that house. It depends, in one case, on the pleasure of the house, or which is the same thing, its organ, the Speaker; and in the other, upon the pleasure of the board, or their agent, the President. The right to require a committee to report to the Board, is the right of the Board; and not of an individual member. The right to take a copy of the minutes, depends on the will of the Board, the charter containing no direction upon the subject. Such being the questions of right, we may advert to those of expediency and propriety.

Heretofore, the government directors mingled in all the transactions of the Bank, served on all the important committees, including that of exchange, as their peculiar qualifications may have warranted—their selection being always a question of qualification. But, in the time of the late government directors, a change had come over the country and the Bank, from which they could not escape. It was for a long time vehemently suspected, and is now, certainly, established by their own confession,\* that the government directors deemed them-

\* See their letter to the President, 22d April, 1833, annexed to the letter of the Secretary of the Treasury.

selves bound, or entitled, to use their posts for the purpose of making representations to the President of the United States, tending to excite odium against their co-directors, by impeaching their motives and acts, and thus to impair the credit of the Bank; that they deemed themselves at liberty, in the performance of this duty, as in the exercise of this right, to pursue objects which they did not care to avow, and which *they were not permitted to avow*; and finally, that in some way, by some unexplained theory of their appointment, they had come to the opinion, that they possessed *political powers* in the institution, which they were authorised to use for political purposes;—that they were devised as *instruments* for the attainment of public objects, and that their appointment was given to the President with the consent of the Senate, in order to clothe them with all the character of official representatives, and to *exact from them* a discharge of all the duties, public, *political*, and patriotic, incident to a trust so conferred. All this being known, or vehemently suspected, may have produced doubts of the propriety of placing these directors in posts of trust and confidence, where other gentlemen, having feelings and reputations of their own, might be unwilling to sit with them. Such doubts would seem to be fully justified by the sense of the Senate of the United States, which has refused to advise, or consent to their re-appointment.

The object which these *instruments* of the President were required to pursue, but forbidden to avow, is now known to have been the inculpation of the Board, and, particularly, of the gentleman at its head; and by means of the odium thus excited, to justify, to public prejudice, an act of deadly hatred to the Bank, of which they were directors—the removal of the deposites. With the confession of concealment by the government directors, to which they were coerced by the Executive, the Secretary of the Treasury arraigns the Board for concealing its operations from them. He charges the Board with concealment, in violation of their charter, and in contempt of the Government, when the head and front of their offence is this, only—that they would not consent to be the dupes of concealment that was practised by others.\*

But the government directors have wholly misconceived their powers and duties. They were not devised as instruments of the President, whatever they may have made of themselves. There is no difference between the rights and duties of any of the directors. Those appointed by the President, owe a duty to the nation; so do the others, and they have performed it. Those elected by the stockholders owe a duty to the Bank, and so did

\* Mr. Binney's speech.

the others; but they neither performed nor acknowledged it. They were not placed there to make inquiries for the President, who had no authority to direct inquiries to be made by them. This is a question of charter power, of power over a corporation, all of whose privileges are rights of property. The charter gives to the President no such right. It expressly gives to the Secretary of the Treasury a right of limited inquiry, by investigating such general accounts, in the books of the Bank, as relate to the statements which the Bank is bound to furnish to the Treasury Department, but no further. Congress have power to inspect the books of the Bank and the proceedings of the corporation generally. These powers have been expressly given, and have been so given, because they would not have been derived by implications from the charter. But, here is a power to be implied, greater than all, and worse than all—a power to be exercised secretly, and without avowal; *ex parte*, without notice, without opportunity of reply or explanation being given to those whom it affects, and by persons who are holding, to all appearances, the relations of amity, with their co-directors sitting on the same seats, and professing the same general objects.\*

If other justification were necessary to the Board for its conduct, than the simple statement of the facts, it is found, in the approbation of all, whom party has not blinded or made mute. Yet, a hue and cry has been raised against the directors of the Bank, because the Bank would not tell the Government directors, that they *might tell the Secretary*, precisely how they meant to wind up, if they did mean it; and here is a new theory of banking, to place beside the new theory of political power—that, all which the Bank intends to do for its own defence, is to be told to an enemy—that, if he thinks fit, he may defeat the measure—that it is not sufficient for him to know the precise condition of the Bank, in point of fact, as it actually is, and as he must perceive it to be, by the weekly statements; but, that he must also know what it is going to be, by the operation of measures of defence, that if it is in his power, and he also thinks fit, he may frustrate the purpose. The private directors of this Bank have upon them the responsibility of taking care of all the stockholders—the nation, for its seven millions, included: and the unwarrantable censure of the President and Secretary, of the mode in which they have fulfilled their duties, has not been sustained by either house of Congress.

2. The conduct of the Bank, in relation to the three per cent stocks, is alleged as an abuse of the power of the private directors, and as evidence of their disposition to conceal their trans-

\* Mr. Binney's Speech.

actions. This affair is but adverted to, not enlarged upon, by the Secretary. But, a most perverted and rancorous statement of it is given in the President's cabinet manifesto.

"In March, 1832," says this document, "the Bank was so sensible of its inability to pay over the public deposits, when they would be required by the Government, that it commenced a secret negotiation with the agents for about \$2,700,000 of the three per cent stocks, held in Holland, to induce them not to claim payment for one or more years after notice should be given by the Treasury Department, that the Bank might use, during that time, the public money set apart for the payment of these stocks.

"After this negotiation had commenced, the Secretary of the Treasury informed the Bank, that it was his intention to pay off one-half of the three per cents on the first of the succeeding July, which amounted to about \$6,500,000. The President of the Bank came immediately to Washington, and upon representing that the Bank was desirous of accommodating the importing merchants at New York, (which it failed to do,) and undertaking to pay the interest itself, procured the consent of the Secretary, after consultation with the President, to postpone the payment until the succeeding first of October. Conscious that at the end of that quarter, the Bank would not be able to pay over the deposits, and that further indulgence was not to be expected of the Government, an agent was despatched to England, secretly to negotiate with the holders of the public debt in Europe, and induce them by the offer of an equal or higher interest than that paid by the Government, to hold back their claims for one year, during which the Bank expected thus to retain the use of \$5,000,000 of public money, which the Government should set apart for the payment of that debt. The agent made an arrangement, on terms, in part, which were in direct violation of the charter of the Bank, and when some incidents connected with this secret negotiation accidentally came to the knowledge of the public and the Government, then, and not before, so much of it as was palpably in violation of the charter was disavowed. A modification of the rest was attempted with the view of getting the certificates without payment of the money, and thus absolving the Government from its liability to the holders. In this scheme the Bank was partially successful, but to this day the certificates of a portion of these stocks have not been paid, and the Bank retains the use of the money."

Two cases of procrastination of payment are here distinctly alleged against the Bank. The facts are, with regard to the

First, that in March, 1832, the Secretary of the Treasury informed the President of the Bank of the intention of the government to pay, on the succeeding 1st of July, to each stockholder, one half of his three per cent stock, remarking "if any objection occurs to you either as to the amount or mode of payment, I will thank you to suggest it." The President replied, that so far as the Bank was concerned, no objection occurred to him; it being sufficient that the government had the necessary funds in the Bank. He suggested, however, that in the existing state of the commercial community, with a very large amount of revenue (nine millions) to be paid before the 1st of July, the debtors of the government would require all the forbearance and aid that could be given them; that the proposed

payment of several millions to European stockholders, tending to diminish the usual facilities, might endanger the punctual payment of the revenue; and that, therefore, it might be advisable to postpone such payment until the next quarter.

This suggestion was supported by letters from Mr. M'Duffie, chairman of the Committee of Ways and Means, and Mr. Cambreling, chairman of the Committee of Commerce. The government wished the postponement; and the only difficulty, arising from a wish to save the quarter's interest, the President of the Bank removed, by an agreement to pay the interest, as the money would remain with the Bank,—a provident and laudable bargain, certainly, for the institution, since it paid three, and would receive six per cent on the amount. The committee of investigation, before whom the whole subject was, in 1832, by their majority, reported, "that they were fully of the opinion that the Bank neither sought for, nor requested a postponement of the payment by the government;" being, however, hostile to the Bank, it added, yet if such postponement had not been made, the Bank would not, on the 1st of July, have possessed the ability to meet the demand, without causing a scene of great distress in the commercial community." The ability of the Bank is no longer to be doubted, and its efforts to save the commercial community from great distress, merits, and will receive, the grateful acknowledgments of the country. And yet this transaction is represented by a President of the United States as a cause for discrediting the fiscal agent of the nation, at home and abroad.

2. With regard to the second postponement, it appears, that in the year 1832 the country was heavily indebted to Europe for large importations of 1831; it was desirable that time should be given to pay the debt, from the annual earnings, and that no addition should be made to the foreign demand. But there were more than twenty-five millions of the public debt payable in that year, of which more than fifteen were to be paid in nine months, and between eight and nine of it to foreigners. The Bank, from its exhibits, was prepared for the first payment on the 1st of October, 1832.

"In this state, the Bank, had it considered only its own interest, would have been perfectly passive, since it was perfectly at ease. But it had other and higher interests to consult. From the communication with the Treasury in July, it was probable that the funds of the Government might be insufficient to pay the debt advertised to be paid—and that even if these funds were adequate, the operation would exhaust all the means of the Government, and require that the community should repay the whole amount of the public funds distributed among them. It was further manifest, that the ability of the Government to meet its engagements, depended entirely on the punctual payment of the revenue in the commercial cities, from July to January, which was estimated at about twelve millions of dollars.

"That resource was threatened with the greatest danger by the appearance of the cholera, which had already begun its ravages in New York and Philadelphia, with every indication of pervading the whole country, Had it continued, as it began, and all the appearances in July warranted the belief of its continuance, there can be no doubt it would have prostrated all commercial credit, and seriously endangered the public revenue, as in New York and Philadelphia alone, the demand on account of the foreign three per cents was about five millions."

The bank, therefore, made an arrangement with the foreign owners of this stock to the amount of about four millions, to leave their money in the country for another year, assuming to pay the interest instead of the government.

"All these things were fully explained by the Committee of Ways and Means, to whom that part of the President's message was referred, and that Committee accordingly reported as follows:—

"The arrangement made by the Bank for a temporary postponement, with the consent of the holders, of the payment of five millions of the three per cent debt, being now substantially closed by the surrender to the Government of the certificates of stock, except for a small amount, and the whole debt itself, as far as respects the Government, at an earlier period than it is probable it would otherwise have been, this question seems no longer to present any important or practical object of inquiry, or to call for, or admit, any action of Congress upon it."

"This ought to be satisfactory, yet is the subject now revived with the addition of two distinct errors in point of fact. The first is that the Bank 'was conscious that at the end of the quarter it would not be able to pay over the deposits'—whereas the state of the Bank, as above explained, proved its entire ability to make this payment, and that its interposition was exclusively dictated by the desire to avert an additional trouble at a season of pestilence. The second is, that the part of the arrangement made with the agent of the Bank was not disavowed until 'some incidents connected with this secret negotiation accidentally came to the knowledge of the public and the Government.' The fact is, that as soon as that part of the arrangement, which seemed to conflict with the charter, was received, the determination was made to decline executing it before any publication of any sort was seen or known in regard to it."

Of the propriety of the conduct of the Bank in relation to this transaction, every experienced and enlightened statesman in the country was satisfied. Its true character, so grossly misrepresented, is thus summed up by Mr. J. Q. Adams:

"What was the case of the three per cents? The Bank was required to pay off, say twelve millions of the public debt, which bore an interest of three per cent a year, to pay it off at two given days, in the year 1832; the Bank paid it off accordingly. Part of this debt, however, was due in Europe, say five millions. The Bank negotiated an arrangement, by which the European holders of the debt consented to wait a year longer before they should receive payment of their portion, they taking the Bank for their debtor instead of the nation, and receiving three per cent for the year's interest. This was equivalent for the time to so much addition to the capital of the Bank. It enabled the Bank to accommodate borrowers here to double the amount, for the year, and to receive therefor an interest of six

per cent. The profit to the Bank was the difference between three per cent, which she paid on said five millions, and six per cent interest, which she received on double the amount which it enabled her during the same time to loan. But suppose it enabled the Bank to loan only to the same amount. She paid one hundred and fifty thousand dollars for the use of the money, and received three hundred thousand dollars by the employment of it. Her profit upon the transaction was one hundred and fifty thousand dollars, one-fifth of which, say thirty thousand dollars, she paid in dividends to the people of the United States."

3. But the Secretary alleges, that it is not merely by the concealment of its transactions that the Bank has proven itself regardless of the duties of its agency. Its own interests are found to be its ruling principle, and the just claims of the public have been treated with little regard, when they have come into collision with the interests of the corporation. As in the case of the three per cents, so in that of the French Bill, in which a demand is made upon the public for the sum of \$158,342 77, damages for non-payment. We have shown, conclusively, in the case of the three per cents, that, though the Bank wisely promoted its own interests, it also essentially served the public. In this case the interests of the Bank and the nation were concurrent. In the case of the French Bill, those interests are, in some respects, adverse, as in the case of debtor and creditor. The claim is a legal one, and as the nation is abundantly solvent, and has been rigorous in exacting her dues from others, she comes with an ill grace to ask mercy and generosity. But this is another appeal from the laws of the country to the passions of the people.

The following is the President's statement of the case.

"The Bank became the purchaser of a Bill drawn by our Government on that of France for about 900,000 dollars, being the first instalment of the French indemnity. The purchase money was left in the use of the Bank, being simply added to the Treasury deposits. The Bank sold the Bill in England, and the holder sent it to France for collection; and arrangements not having been made by the French Government for its payment, it was taken up by the agents of the Bank in Paris, with the funds of the Bank in their hands. Under these circumstances it has, through its organs, openly assailed the credit of the Government, and has actually made and persists in a demand of fifteen per cent, or \$158,342 77 as damages, when no damage, or none beyond some trifling expense, has in fact been sustained, and when the Bank had in its own possession on deposit, several millions of the public money which it was then using for its own profit. Is a fiscal agent to the Government, which thus seeks to enrich itself at the expense of the public, worthy of further trust?"

To this, the Bank replies, publishing unquestioned and incontrovertible evidence of the truth of its statements:

1. That in this transaction, it was not the fiscal agent of the Government,—that it offered to become such, to collect the bill without charge, and to place the amount to the credit of the

M



Government on the 2d of March, 1834, at the current rate of exchange of the best bills, on that day, in Philadelphia—that this offer was refused; and the Government, after considering the offers from other quarters, decided to sell the bill to the Bank—the Bank paying for it, nearly one and a half per cent more than for a large amount of other bills, then purchased.

2. That the purchase money was not left in the use of the Bank, being simply added to the treasury deposits. But had such been the fact, no change would have been made in the nature of the question. The payment was complete—the funds were to the credit of the Government, subject to its order, and as effectually out of the control of the Bank as if they had been withdrawn in specie. Not only was this the case; but the intention of withdrawal was immediately announced. Credit was given to the Treasurer on the 11th of February, 1833; and on the 6th of March, the Secretary offered to lend the money. Yet this was not all. The identical proceeds of the bill were actually used by the Government in payment of its ordinary expenses, by the 20th of May.

3. The Bank had paid the amount of the bill in the United States in the most inconvenient form. When it was protested in Paris, the agent of the Bank paid it on account of the Bank; so that the Bank actually paid for the bill twice;—having, of course, credit for the proceeds of the sale of the bill in London; but its actual disbursements on account of the bill were upwards of \$1,800,000,—and when, on the 22d of March, the protested bill came back, the whole amount to the credit of the Treasury, throughout the whole United States, with the exception of the Danish indemnity money, was not two thousand dollars more than the Bank had advanced on account of the bill. Had it been otherwise, the use of the deposits by the Bank would be no ground for the release of damages; since a full and covenant consideration was paid for that, by the stipulated services of the Bank.

4. Upon return of the bill, the Bank, as indorser, called on the Government for the principal and damages. This was not only in course of business, but was a duty to the Government; because, if it had the right to draw the bill, it had the right to claim, from France, damages for the breach of contract, suffered by payment of the legal claim of the Bank. This it might the more readily do, as being one-fifth partner of the Bank, its own share would be \$31,000. In the course of events the government will, probably, be the gainer by the demand of the Bank. But its legal liability does not depend on this; and it is denied, with a very ill grace, by a party which inexorably, under *all* circumstances of solvency and insolvency, exacted damages on protested bills purchased from American citizens.

The case of Girard is cited by the Bank as one of the most striking. The lapse of years reverses the state of the parties; Mr. Girard's heirs and his associates, apply to the Secretary—not for twenty per cent damages which he paid, but for fifteen per cent; and the answer vouchsafed by the treasury department, is, that the claim has no foundation in law or equity—to which the President adds, that it is an attempt to “impair the credit of the Government, and tarnish the honour of the country. Such a course tends to the utter confusion of all ideas of justice.

But, supposing the claim were questionable, would it justify this denunciation of the Bank? It is a question between American citizens and their Government, depending on the law of the land, and determinable by its judicial tribunals. Yet, while the Bank calmly awaits the decision, the President of the United States prejudges the question,—denounces the Bank for having presumed to make the claim,—and gives that to the country, as a reason for the removal of a Secretary of the Treasury, in order to subject the whole public revenue to his own disposal.

III. The last reason, in fact, assigned by the Secretary is, that the Bank has used its means, with a view to obtain political power, and thereby secure the renewal of its charter. This is a grievous charge, and, if true, grievously should the Bank answer it. The specifications under the charge are—

1. That, with a view to influence the measures of the Government, by causing its weight to be felt in the election of public officers, the Bank increased its discounts, from \$42,402,304 24 to \$63,026,424 93; nearly fifty per cent in one year; and on the 1st of May 1832, to \$70,428,070 72, being an augmentation of \$28,025,766 48 in sixteen months. This extraordinary increase of its loans, was made when the charter had but *four* years to run, with little chance of renewal; when she was aware of the necessity of closing up her vast concerns, and upon the eve of a severely contested election, in which she took an open and direct interest, *demonstrates*, that she was using her means for the purpose of obtaining a hold upon the people, in order to operate upon their fears, and to induce them, by apprehensions of ruin, to vote against the candidate whom it desired to defeat.

Here is a singular compound of allegations of fact, and suppositions. The former are untrue and the latter wholly gratuitous. The time at which the alleged increase of loans was made was not within *four* but *six* years of the termination of the charter;—a time at which no reasons of prudence required a limitation or reduction of the business of the Bank, other than the ordinary principle of safety. That such principle was duly

regarded is evident from the present perfect condition of the institution. The chances of renewal were greatly in her favour, as demonstrated by the fact, that an act for that purpose passed both houses of Congress—the Bank could not, *a priori*, assume, or believe, that a President of the United States, avowing no constitutional scruples, would oppose himself with his obnoxious Veto, to the declared sense of the country upon a question of expediency. The hold which the Bank was to get upon the people implies, that the loans, if made, were made to insolvent debtors, with the knowledge of their insolvency. For, if made to solvent debtors in the ordinary way of business, they could have no effect upon the opinions or votes of the borrowers. There are things asserted in morals as in physics which are incredible, because they are in opposition to known laws of action. It is contrary to these, that, an institution, whose end and aim is pecuniary profit, guided by intelligent men, should put at hazard 28 millions of its funds, to affect an object that was already attained. For, there is not a man in the country who does not know, that had the President been neutral upon the subject, the Bank would have been rechartered without objection. Supposing, what it is impossible with propriety to suppose, that the object could have been attained and would have been worth the price,—had the Bank offered her millions to bribe the President, she would indeed have been chargeable, with an attempt “to influence the measures of the Government,” unduly.

But the Bank has reduced her loans from their maximum of \$70,000,000, to \$54,000,000. Had the increase been made with design to influence the votes of the borrowers, the reduction would have been avoided; for, all who have been compelled to pay, would become her enemies. And we well know, that the passion of revenge is, not only a more powerful, but a more durable motive than gratitude, especially, for a pecuniary accommodation which has been fully paid for at legal price.

But the allegations of fact are untrue. The loans at the periods mentioned by the Secretary stood thus:

	January, 1831.	May, 1832.
Loans to Individuals	\$33,575,403 43	\$47,375,078 20
Loan to Government	8,674,681 06	
Domestic Bills	10,456,653 90	23,052,972 52
	<hr/> \$52,706,738 39	<hr/> \$70,428,050 72
		52,706,738 39
		<hr/> \$17,721,312 33
Baring, Brs. & Co.	Cr. 2,387,331 19	Dr. 1,878,122,29

From this it is manifest that between those two periods the Bank had received from Government the reimbursement of	\$8,674,681 06
It had drawn for its foreign funds	\$2,387,331 19
And drawn on its foreign correspondents for an additional sum of	1,878,122 29
Making a total of	<u>4,265,453 48</u>

Thus furnishing additional means of discounting to the amount of	\$12,940,134 54
Yet its actual loans—its actual discounts were increased only	<u>5,124,893 71</u>

The Domestic Bills of Exchange purchased for the transferring of the funds of the Government or of individuals, make a separate and independent business, dependent on the demand for the interior commerce of the country. But taking the increase of those bills into consideration, it will be seen that the increase of loans is	\$5,124,893 71
And the increase of Bills of Exchange	12,596,318 62

Making a total increase of	<u>\$17,721,212 33</u>
----------------------------	------------------------

instead of 28 millions. That is to say, in the year 1831, there being a most active foreign and interior trade, requiring unusual facilities for its operations, the Bank having received from the Government the reimbursement of its loan to Government, amounting to more than eight millions; and having called in its funds in Europe, and employed its credit there to the amount of four millions, possessing thus additional means of loaning, to the amount of nearly thirteen millions, actually increased its loans to the amount of seventeen millions, making in fact a mere increase of its investments not equal to five millions, of which increase the new Branch Bank of Natchez, established within that period, alone contributed nearly three millions.

2. The second specification of the design of the Bank to obtain political influence is, that, the whole capital of the Bank is, in effect, placed at the disposition of the President of the Bank, for political purposes. The evidence alleged by the Secretary, as substantiating this enormity, is the disclosures of the Government Directors, who have deemed themselves, *ex officio*, viceroys; but have been characterized, repeatedly, in Congress as *official spies*, over the rest of the Board.

The basis of this accusation is found in the following proceedings and resolutions of the Board:

On the 30th November, 1830, the President submitted to the Board a copy of Mr. Gallatin's article on Banks and Currency, published in the American Quarterly Review, and suggested the propriety of making the views of the author more extensively known than could be done by means of the subscription list of the Review. Whereupon it was resolved, "that the President be authorized to take such measures in regard to the circulation of the contents of the said article, either in whole or in part, as he may deem most for the *interests* of the Bank." On the 11th of March, 1831, on further suggestions and reports of the President, it was also resolved, "that the President, be au-

thorized, to cause to be prepared and circulated, *such documents and papers as may communicate to the people information in regard to the nature and operations of the Bank.*"

An attempt was made by the Government Directors to obtain, what the Board deemed, unusual and unnecessary statements of expenditures under these resolutions, and also their repeal. Their resolution, offered to this effect, implying censure on the President, the Board resolved, "that they have full confidence in the wisdom and integrity of the President, and in the propriety of the resolutions of the 30th of November, 1830, and the 11th of March, 1831, and entertain a full conviction of the necessity of a renewed attention to the object of these resolutions, and that the President be authorized and requested to continue his exertions for the promotion of the said objects."

The expenditures purporting to be made under the authority of these resolutions during the years 1831 and 1832, the President of the United States avers, were about \$80,000; the objects to which they were applied, were Congressional reports, Mr. Gallatin's and other pamphlets relating to the Bank, and newspapers containing proceedings of Congress and discussions of this interesting topic.

Now, the Bank shows by details of their expense account, that the expenditure for these purposes, during four years, instead of \$80,000 was but \$58,000, which it was obliged to incur, to defend itself against injurious misrepresentations. With this expenditure, the stockholders, the nation included, are, so far as their sense can be ascertained, entirely content. The directors eligible by the private stockholders have been re-elected—the public directors eligible by the nation, who misrepresented and denounced the expenditure, have been rejected, expressly upon the ground of misconduct, in this very case. What more conclusive can be said, as to the propriety of the conduct of the Board in their defence of the Bank! But one word as to the right of the directors to resort to the press for that defence. On this head Mr. Binney shall speak:

"Sir, I deny the charge. I say the design was not entertained, and that not a particle of evidence has been produced to infer the contrary. The Board have printed and published, and have assisted in printing and publishing, 'for the purpose of communicating to the people information in regard to the nature and operations of the Bank, and to remove unfounded prejudices, or repel injurious calumnies on the institution intrusted to their care.' This is the declared purpose of all they have done, and they stand upon the sacred principle of self-defence in asserting their right to do it. That there was nothing in the veto message to justify the circulation of the review which the gentlemen from Tennessee has noticed, is more than I admit; and when the gentleman shall assert, upon his own authority, that the Board have given currency to a scurrilous pamphlet

against any one, he will find me ready either to deny the fact, or to admit its impropriety. The Constitution secures to every person, natural and political, the right of printing and publishing, being responsible for the abuse of it. It prohibits Congress from passing any law abridging the freedom of the press. If the charter had inserted a provision to restrain the Board of Directors from printing or publishing, it would have been null and void. An interpretation of the charter to restrain it is equally so. They have the universal right, subject to the constitutional corrective through the judicial tribunals of the country; but to condemn, and then to try them—to punish, and then to hear—belongs not to the tribunals of this earth, nor to the Constitution of this country."

But, how vast the difference of the costs imposed on the nation by the respective parties!

We give a view of this from Mr. Adams's Speech.

"The Bank, in the course of four years, have spent sixty thousand dollars in printing and paper, they say in self-defence; the President of the United States says, in electioneering *against him*, and for a recharter to themselves. This money was the property of the stockholders, and one-fifth part of it, twelve thousand dollars, belonged to the people of the United States. The people of the United States own seventy thousand shares of the stock of this Bank. When the President of the United States declared war against the institution, every one of those shares was worth one hundred and thirty dollars. What are they worth now? At the utmost, one hundred and five dollars a share. Compare the prices current of the two periods, and you will find that every share of the Bank stock owned by the people of the United States, has lost twenty-five dollars of its value to them by this electioneering of the President of the United States, against the Bank, and for himself. Twenty-five dollars a share, upon seventy thousand shares, is one million seven hundred and fifty thousand dollars; and this is the sum which the President of the United States has levied upon the people, by his electioneering against the Bank and for himself.

"Thus, then, stand the comparative accounts. The Bank has cost the people of the United States, in electioneering against the President, and for itself, twelve thousand dollars. The President has cost the people, in electioneering against the Bank, and for himself, one million seven hundred and fifty thousand dollars. And in this same contest of electioneering, while the Bank has expended forty-eight thousand dollars of the money of the other stockholders, the President of the United States has taxed them to the amount of seven millions of dollars. Eight millions seven hundred and fifty thousand dollars is the sum levied by the President of the United States upon the stockholders of the Bank, for his electioneering; and the Secretary of the Treasury tells us that sixty thousand dollars expended in the same contest by the Bank is sufficiently *startling*."

3. There is yet a third specification under the charge against the Bank—of attempting to gain political influence. It is made by the President, in his cabinet manifesto; but, the Secretary of the Treasury has had the grace not to dwell upon it, in his report to Congress. It is "that the Bank controls, and in some cases, substantially *owns*, and by its money *supports*, some of the leading presses in the country," by unwarrantable loans. But as this charge has not been persisted in, and the report of the Committee of Investigation in 1832 covers the whole ground

which Congress did not believe an improper one, we will not enlarge upon it.

But, in closing this part of the subject, we may remark, that these charges of dishonesty and corruption are equally ungenerous and unjust. Ungenerous, because they are made under the protection of official station against private citizens, for such are the representatives of the private stockholders of the Bank, in a manner which deprives them of the means of defending themselves, and vindicating their characters. They are unjust, because made, not in candid, open and explicit forms, which ought to mark all official denunciations, against individuals, but in a manner consciously evasive, and distrustful of itself, and because they are untrue. These charges, too, deeply as they affect the character of private individuals, are not made directly against them by name. No! it is *the Bank*, that is the monster; the moneyed aristocracy; the mammoth corporation; *that* is the sink of corruption; the purse-proud tyrant; corrupt itself, and practising corruption upon the people.\*

"Now, strip Andrew Jackson and Roger B. Taney of the little brief authority which invests them with the privilege of slandering their fellow-citizens with impunity, and neither of them would DARE to charge any one of those men whom I have named, (the *Bank Directors*), either before their faces, or any where in the presence of credible, impartial witnesses, with dishonesty or corruption, either in general terms or by any one specification. Neither of them would dare go to the city of Philadelphia, and there, in any possible manner, avow a charge against any one of those men, which could make up an issue for a test of character by a verdict of their peers. It may, indeed, be a question whether even a President of the United States, or a Secretary of the Treasury, does possess the right of pouring forth slanders upon private individuals, wholly without responsibility to the laws, protective of character. It cannot be doubted, that, *under colour* of the discharge of official duty, it is in the power of those high dignitaries to blast the reputation of individuals by groundless imputations, for which the injured party would in vain seek reparation or indemnity from the laws of his country. But, even this odious privilege has its limits. Neither a Secretary of the Treasury, nor a President of the United States, is wholly above the law. No one will deny that both those officers are, as individuals, liable to action or indictment for slanders, like others, and there seems to be a full consciousness of this, in the undeviating uniformity with which they point their official defamation at *the Bank*, instead of directing their charges, as fair and honourable adversaries ought to do, at the president and stock directors of the Bank, the real objects of their accusations."\*

In determining on the propriety of the conduct of the Secretary, we may consider the acts of the Bank, either as consistent with, or in violation of, the charter. In the first case, they are mere acts of administration or management of the Bank, which the United States, as a stockholder, have agreed to commit to the discretion of the Board of Directors. Neither the Government Directors nor the President of the United States have a vote on the proceedings of the Board. If their resolutions be lawful,

\* Speech of Mr. J. Q. Adams.

they bind all the stockholders, public and private; and if inexpedient, their correction is to be sought in the annual elections. Upon questions of administration, within the legal competency of the Board, there is no more justification of an attempt to tear the Bank to pieces, by a part of the Directors, or by the Treasury Department, in support of them, because the voice of the minority is not respected, than there would be for an attempt, by a State or States, for the like reason, to sever the Union. All the parties to the contract have agreed, that questions of administration within the lawful competence of the legislature, whether of the Bank or of the Union, shall be decided, by a majority; and if they require correction, that they shall be corrected by a majority, and in no other way. If the measures of the Bank were lawful, the dissatisfaction of the Secretary with them is no cause for removing the deposits. The management of the Bank has not been committed to him. He has no right to inspect its management, or even its condition, except in a limited way, for the purpose of ascertaining the security of the deposits. To have given him the power of removal in any case in which he should deem the management wrong, would have been to give him, effectually, the management of the Bank in every particular.

If, on the other hand, the acts questioned, are violations of the charter, the objection to the Secretary's acts are not less strong. He is not the officer to whom the charter has confided the authority to direct a prosecution for a violation of the charter. It has expressly confided that authority to others—the Bank is entitled to be heard, before any judgment of violation is pronounced—and that judgment is to be rendered by the judicial department only.\*

Before we proceed to the consideration of the last subject which we proposed to treat, namely, "the right claimed by the President to remove, at his pleasure, from office, all persons whom he is empowered to nominate," it is proper we should notice an episode to the removal of the deposits, in the illegal and defeated effort of the administration to transfer the pension fund from the Bank of the United States to the pet banks.

By the system of pension agency, as established by law, the Bank of the United States and its branches pay the pensions in States where they are respectively established: and the Bank designate, for this purpose, some State bank where there is no branch bank; and where there is no State bank, the Secretary at War is authorized to appoint a pension agent.

The administration made several efforts to obtain possession of these funds, at certain places, prior to January, 1834, by transferring them to the State banks, at Portsmouth and Albany; but, the remonstrances of the Bank of the United States exhi-

\* Mr. Binney's Speech.



bited the illegality of the measure in so strong a light that, Mr. Eaton, Secretary at War, revoked, himself, one of his orders, and his successor recalled the other. These were very mortifying circumstances, producing a festering wound in the mind of the President; the pain of which could be assuaged, only, by vengeance. For this, an opportunity was supposed to be discovered in the phraseology of the pension acts of 15th May, 1828, and 7th June, 1832, which, by forced construction, it was thought, might be separated from the general pension system; although they had been recognized as parts of that system, by every executive department, and, what is more to the purpose, by several subsequent acts of Congress, in which they were, by name, recognized as pension acts. This, however, proved no barrier to executive invasion; and in January, 1834, the Secretary at War announced the appointment, on the same day, of fifteen new pension agents (pet banks), to perform the duties heretofore fulfilled by the Bank of the United States, under the act of 1832; and, at the same time, that Bank was forbidden to pay any pensions accruing under that act, and directed to transfer the funds, books and papers, relating thereto, to the newly nominated agents.

With this requisition of transfer the Bank of the United States refused to comply, on the ground, that it was not warranted by law, and that the Bank was alike bound by its duty to Congress and regard for its own safety so to do.

On the 4th of February, the President of the United States communicated this refusal to Congress, denouncing the Bank in unmeasured terms, for attempting to impede and defeat the measures of the administration, usurping the functions of the judicial power, and prescribing to the executive department the manner in which it shall execute the trust confided to it by law.

This grave but unfounded accusation, having been duly examined by the Senate, like every other accusation against the Bank from the same source, has been dissipated into thin air. On the 26th of May, the Senate resolved, 1. That the Department of War is not warranted in appointing pension agents in any State or Territory where the Bank of the United States or one of its branches has been established, except when specially authorized by act of Congress. 2. That no power is conferred *by any law* upon the department, or Secretary at War, to remove the agency for the payment of pensions, under the act of 7th June, 1832; and the funds, books and papers, connected with that agency from the Bank of the United States, and to appoint other agents to supersede the Bank in the payment of such pensions. 3. That the act of Congress for the relief of certain officers and soldiers of the Revolution, passed on the 15th May, 1828, and the act supplementary to that act, passed on the 7th of June, 1832, are properly acts providing for military pensions.

The proceedings of the executive officers, in this case, and the opinions professed in relation to it by the President and the Attorney General, merit examination in another view than as they regard the Bank. The unconstitutional assumption of power is here theoretically and practically displayed, as in most other measures of General Jackson's administration, and demand thorough and wide exposure. But our space and subject do not now permit the fulfilment of this duty.

IV. The Constitution of the United States, consisting of fundamental rules only, contains little else than general principles, subject to various and conflicting interpretations. Scarce a year has elapsed since its adoption, in which some construction or new application of a principle has not arisen to agitate the country. And such will be the case, so long as due regard for political liberty excites a wholesome jealousy of constructive power, and prompts us to confine within safe limits its necessary but dangerous exercise. As this power must always be exercised in subservience to existing circumstances and prevalent opinions, and as the one may be deceptive and the other unfounded, errors will arise for which experience must furnish appropriate remedies. When the sense of the constitution is perfectly clear, and its operation proves mischievous, the remedy lies in amendment of the letter of the instrument. But, when an evil practice results from the construction of the letter, it is the voice of experience teaching us to seek another interpretation, more consistent with the public happiness, which is the governing purpose of the grant made by the people—it is the extraordinary and peculiar circumstance, which Mr. Madison admits may arise, to change the construction, however long received.

These remarks are peculiarly applicable to the portions of the constitution, whence has been derived the power of the Executive to remove from office; which seems to depend altogether upon construction. The power and mode of appointment are clearly and literally expressed, whilst the tenure of office as to time and condition is wholly undefined, except in case of the judges; and there is no provision for removal of an incumbent, save by impeachment.

This omission compels resort to construction, for a power to remove from office, otherwise than by impeachment, which seems, in some cases, as indispensable as the power to appoint. In the absence of every expression which might give this power, adherence to the letter of the constitution would make the tenure of every officer that of good behaviour; since he could be removed, only, upon the judgment of the Senate, on impeachment. And this opinion was sustained, as constitutional law, by some distinguished members of the first Congress. But the inconvenience of this construction, as it regards many offices, is such, that the opinion has not found many advocates. Three other opinions have been earnestly main-

tained. I. That the power to remove belongs exclusively to the President. II. That it rests with the President and Senate, which together form the appointing power. III. That it is a power necessary and proper to carry into effect other powers, and being not otherwise delegated, is granted to the Legislature. We will consider these in their order.

The question first came up for consideration in the first Congress, when about to establish the executive departments. We much doubt whether any construction could have been given, to any portion of the constitution, pregnant with more danger to political liberty and moral purity, than that which was then adopted.

I. The power to remove from office was claimed for the President, alone, as incident to the power to appoint. It was admitted, on all hands, to be a dangerous one, and liable to great perversion. But it was contended, that it would not be abused, as it was not likely that the first magistrate would ever be an ambitious or designing character, and that he would be ever awed by the dread of impeachment. It was said to be a portion of the *executive power*, all of which was vested in the President; except so far as the Senate participated in the power to appoint: That the President, being responsible for all the officers of the executive department, those officers must be responsible to him, and consequently removable at his pleasure. That being required by the constitution to take care that the laws be faithfully executed, it was necessary, for this purpose, that all executive officers should depend upon him.

To this, it was replied, that it was an assumption wholly gratuitous, to say, that the power of removal was incident to the power of appointment; the one not being necessarily dependent upon the other, but readily separable, as was apparent, by the constitution itself, under which the President and Judges were appointable by one power and removable by another; by the applicability of impeachment for removal in all cases; and by the assignment of the power of removal to other than the persons who appoint, in various manners, under the State legislatures:—That it could not be considered settled, that the power to remove was an executive power; since, even the power of appointment was exercised by the State legislatures; and Congress in certain cases, under the constitution might vest the power in the judiciary:—That, supposing the power to remove were incident to the appointing power, it would not belong to the President, as the appointing power was not in him, but in him and the Senate conjointly: That the evidence of history forbade the presumption, that the chief magistrate would be always free from ambition and design; and that if he were otherwise, the dread of impeachment would not deter him from using his power to corrupt officers dependent on his will:—That although the constitu-

tion declared, that the executive power should be vested in the President, that was not an indefinite grant of *all* executive power; the executive power could be only such as was given by the constitution; no department under the general government having other powers than were expressly granted, or were indispensable to carry those expressly granted into effect: that clause, therefore, of the constitution proved too much, and consequently proved nothing; because it implied, that powers which are expressly given by the constitution would have been in the President without the express grant: That any other construction would give to the President all the powers of an absolute monarch, embracing every power which could by any means be brought within the definition of executive power; including that of regulating at his discretion all the duties of his subordinate agents, with the manner in which they should exercise them:—That the responsibility imputed to the President was wholly ideal, since the responsibility even for the appointment did not rest altogether upon him, being divided with the Senate.—If he were responsible for the conduct of the officer, it would be because he might remove him; but if he had not the power of removal, the responsibility did not exist.—It was sufficient that the officer was responsible to the law; to give to the President the power of removal, would impose a responsibility that might be irksome.

II. It was contended, that, if the power to remove were incident to that of appointment, it vested in the President and Senate, as the President alone could only *nominate*; to *appoint*, required the advice and consent of the Senate. This view was sustained by the Federalist in the following manner.

“It has been mentioned as one of the advantages to be expected from the co-operation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. *The consent of this body would be necessary to displace as well as to appoint.* A change of the Chief Magistrate therefore would not occasion so violent or general revolution in the affairs of government as might be expected if he were the sole disposer of offices. Where a man in any station has given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change, in favour of a person more agreeable to him, by the apprehension that the discountenance of the Senate might prostrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration, will be most disposed to prize a provision, which connects the official existence of public men with the approbation or disapprobation of that body, which from the greater permanency of its own composition, will, in all probability, be less subject to inconsistency, than any other member of the government.”

• It was also contended, that, not only was there no expression in the constitution giving the President the power of removal from office, but that the contrary is strongly implied; for it is said, that, Congress may establish offices by law, and vest the appointment, and consequently the removal in the President alone,

in the courts of law, or heads of departments; showing that Congress was not at liberty to make any alteration, by law, in the mode of appointing superior officers; and, consequently, they are not at liberty to alter the manner of removal: That the Senate was a permanent body, so constructed as to give durability to public measures; that permanency was designed and desired in the magistracy, and, therefore, the Senate was combined in the appointment to office, and should be, in the removal. For if the President alone have the power of removal, he may, at any time destroy whatever had been done. Such a principle would be destructive of the intention of the constitution, expressed by giving a participation in the power of appointment to the Senate; and would also subvert the clause, which gives to that body the sole power of trying impeachments; because, the President may remove the officer, in order to screen him from the effects of their judgment and impeachment.

To these views, it was objected, that the constitution no more gave the power of removal to the President and Senate, than to the President alone; that, if the appointing power were in them, still it must be determined, that the removing power was incident to the appointing power: That, to require the concurrence of the President and Senate, in the removal of an officer, was highly objectionable, on the score of expediency—for that, in all cases of removal, the president must accuse to the Senate; the accused would scarce fail to find friends in so numerous a body, and every question of removal might become a trial of the accuser, as well as of the accused; that, the dignity and usefulness of the President must necessarily be, in either case, diminished; and that such joint power could be only conveniently exercised, by the constant session of the Senate, as many cases might arise, that would require action before the Senate could be assembled.

III. A third party contended, that the case was provided for in the constitution; the 18th clause, Sec. 8. Art. 1., giving Congress power to make all laws which shall be *necessary and proper* for carrying into execution the powers granted by the constitution, and thereby vested in the government of the United States, or any department or office thereof: That the necessity of the power of removal, otherwise than by impeachment, was universally admitted: That, the power of creating offices is given to the Legislature, which under this grant may determine their organization, affix the tenure, and declare the control. It may provide that, the office be held for any term of years, and that the incumbent be removable by the President, the President and Senate, the legislature, or otherwise: That Congress might adapt this power to all cases; giving it to the President absolutely, where absolute and instantaneous control was necessary over the agent;

as in the case of a diplomatic minister ; limiting it to suspension, only, where time and circumstances would admit of due inquiry, into the propriety of removals or vesting it, in proper cases, absolutely, or qualifiedly, in heads of departments or other officers :— That under this construction, it would not be necessary to concede the dangerous ground, that, the President possessed *all executive power*, and that being responsible for the conduct of all executive officers, he held the threads of their destiny in his hands, to clip at pleasure : That, if the power of removal be granted by the constitution, as seemed to be admitted on all hands, and was not given to the President, or to the President and the Senate, it must vest in the legislature, consisting of the House of Representatives, the Senate and the President ; it being the very essence of legislative power to create officers, to prescribe their duties, to fix their tenure, and to determine what kind and degree of malversation shall be sufficient ground for dismissal from office.

This construction, which seems to us the only sound one, was, we think, feebly opposed. It was alleged, that this was a case omitted in, or provided for, by the constitution ; and that, in either view, the legislature had nothing whatever to do with it. If it were omitted, Congress by attempting to supply the power would amend the constitution ; which it had no right to do in this mode. But this argument, would deprive Congress of all the powers *necessary and proper* to carry the constitution into effect. If it were provided for, Congress ought not to legislate upon that, which was already settled by the constitution. But, if the power were given by the constitution, the difficulty lay in determining to what department it was given.

At the time this question came up for decision, no experience could have been had, upon it, in the General, or State, Governments. In the constitution of one of the latter, at least, and perhaps in others, expressions similar to those of the constitution of the United States occur.

By the constitution of Pennsylvania, “The Supreme Executive power of the Commonwealth shall be vested in the Governor ;” “who shall appoint all officers whose offices are established by the constitution or *shall be established by law*, and whose appointments are not by the constitution otherwise provided for.” Now, these provisions present a stronger case in favour of the executive, than those of the constitution of the United States ; inasmuch, as under the latter instrument, the legislature is expressly empowered to “vest the appointment of such inferior officers as they think proper, in the President, alone, in the courts of law, or in the heads of departments.”

Under the constitution of Pennsylvania, by construction alone, the Governor is holden to possess the right of removal from office ; and in practice, the commissions of all officers holden at his will,

are deemed to expire with his term of office; or at least, to require the authority of the new Governor, which is usually given by proclamation, to continue them in force; and a new commission is, we believe, issued for every such officer, by every new Governor, if not by every Governor upon re-election. The consequence of this is, a perpetual contest of parties for the possession of the *instrument* of appointment; the Governor being, commonly, we might say almost without exception, the mere tool of the party, that selects him; without discretion and without dignity; swayed with regard to the appointments of each county, not by the fitness of the candidates, but the recommendation of his partisans; and the officers selected, perfectly conscious of the quality which determined their appointments, are the humblest slaves of the Governor, so long as he is the candidate of the dominant party. At every change of the executive, especially if such change be the consequence of a change of party power, the scramble for offices, the paltry intrigues, of which the appointor and the appointed are parties, are most shameful and disgusting. *Yet, whenever the Legislature deems proper, it takes away from the executive the power of removal, or qualifies it with conditions.*

Many instances of the exercise of this power might be given; but we shall confine ourselves to a few only. The heads of departments in the Commonwealth may be considered, the Secretary of State, the Treasurer, the Auditor General, the Secretary of the Land Office, and the Surveyor General. The first is appointable by the Governor, but the term of his office is fixed for the term of the Governor's continuance in office, if he shall so long behave well. Consequently, he is immoveable, by the Governor. The Treasurer is elected, annually, by the Legislature, and is removable, only, by that body. The Auditor General, the Secretary of the Land Office, and the Surveyor General, are all appointed by the Governor, and, until the year 1811 the first, and until the year 1809, the two last were removable by the mere will of the executive. But by acts passed in these years the term of office of each of these officers was fixed at three years, and they were made removable by the Governor, only on *the address of both houses of the Legislature*. A distinction is made, in relation to the Auditor General, by which it would seem, that, if an incumbent do not serve the full term of three years, his successor is appointable, only for the balance of the term. Thus, in the great offices of State, the Legislature has modified the tenure of office to which the Governor by the constitution appoints, and has taken to itself the power of removal. In minor offices, they have also taken from the Governor, or have qualified, the power of removal. And thus, they have conclusively shown, that neither by the power to appoint, nor by the duty to take care that the laws be faithfully

executed, which is also imposed upon him, is the power to remove from office, under a grant similar to that given by the constitution of the United States, exclusively and inseparably vested in the executive. This is not a conclusive argument, we admit, against the construction given to the Constitution of the United States; but it is high presumptive evidence that a different construction may be safely adopted.

Still, the debate on this subject ended in Congress, in the House of Representatives, and in the Senate, in the latter body, by the casting vote of the Vice President, the elder Adams, by the recognition of the power of the President to remove from office, all persons holding appointments from him. This conclusion, which fortunately is not binding upon the present or a future Congress, was attained under deceptive circumstances and erroneous opinions. All parties were conscious of the importance of the subject before them. Those who denied the power, seem also to have had a prophetic view of the future; whilst those who supported it, professed to believe, that the halcyon present would never change, and that all future presidents would be Washingtons.

The former averred, that they were about to declare a power in the President, which might be, thereafter, greatly abused: That the country was not always to expect a chief magistrate, in whom it could place such entire confidence as in Washington, and that it ought, therefore, to look forward to a period, when this power might be in the hands of an ambitious man, who might apply it to dangerous purposes;—who might from caprice remove the most worthy man from office; whose will would be the only tenure, by which office would be held, and when, consequently, every officer would become the dependent, the abject slave of the President, and when men of reputation and honour would shun office as they would the degradation of slavery. But the case, they said, might also be looked at in another aspect. The removal might be made by a President, improperly, though without malicious motives. He might have about him, men, who were envious of the honours and emoluments of persons in office; men, who might, even use him as an instrument to effect sinister purposes, and who might insinuate suspicions into his honest breast, and thus produce the removal of incumbents who stood in their way.

They predicted, that the President would, by these means, obtain the control and disposition of the Treasury: That the constitution gave him the command of the military, and that with the head of the Treasury Department at his mercy, he would soon be master of the liberties of the country: That, if he desired to establish an arbitrary authority, and found the Secretary of the Treasury not inclined to second his endeavours, he had nothing



more to do, than remove him, and appoint another with principles more congenial to his own. The bill recognizing the authority, was declared to contain the seeds of royal prerogative; and it was argued, that if the Chief Magistrate might take a man away from the head of a department, without assigning any reason, he might as well be invested with power, on certain occasions, to take away his existence.

The partisans of executive power denied these dangers. So differently did they consider the nature of office from that assigned to it at the present day, that they deemed it even impossible to conceive of the removal of incumbents, for other causes than the want of capacity or of integrity. It is amusing and yet painful to contrast the opinions of the influential men of that day with those of the Jackson men of this; and perhaps nothing can show more, how widely we are departing from the original sense of the constitution. So far from considering the offices of the nation "spoils of victory," to animate every needy and unthrifty partisan to combat, they ran almost to the contrary extreme, and were disposed to view offices as the property of the incumbents, whilst they were fulfilled with ability and faithfulness. So far from conceiving that men were removable for a difference of opinion, on political subjects, from the appointing officer, they recognized no other causes of removal, than treason, bribery, or other high crimes and misdemeanors. So far from apprehending, that a President could ever exist, who would delight in causing a "rotation in office," they dreaded, that from his reluctance to perform an ungrateful duty, more injury would arise from not removing improper officers, than from displacing good ones: and so far from supposing, that the first magistrate of the nation, the chosen of twelve millions of freemen, would carry to the Executive chair a disposition to *reward his friends*, that is, his partisans, and *punish his enemies*, that is, his opponents at the polls, by the distribution of office, that they held him alike impeachable, for continuing an unworthy man in office, and the removal of an unworthy man from office.

The contrast of the opinions of the present administration, with those of our fathers, will be obvious, by adverting to the doctrines proclaimed by President Jackson, in his first Message, December, 1829, and by comparing the number of removals from office, made in the times of the preceding presidents and in his:

"The duties of all public offices," he says, "are, or at least, admit of being made, so plain and simple, that men of intelligence may readily qualify themselves for their performance. I cannot but believe, that more is lost by the long continuance of men in office, than is generally to be gained by their experience. I submit, therefore, to your consideration, whether the efficiency of the government would not be promoted, and official industry and integrity better secured, by a general extension of the law, which limits appointments to four years."

"In a country where offices are created, solely, for the benefit of the people, no one man has any more intrinsic right to official station than another. Offices were not established to give support to particular men at public expense. No individual wrong is, therefore, done by removal; since neither appointment to, nor continuance in office, is matter of right: The incumbent became an officer with the view to public benefits, and when these require his removal, they are not to be sacrificed to private interests. It is the people, and they alone, who have a right to complain, when a bad officer is substituted for a good one. He that is removed, has the same means of obtaining a living, that are enjoyed by the millions who never held office. The proposed limitation would destroy the idea of property now so generally connected with official station; and although individual distress may be sometimes produced, it would, by promoting that '*rotation*' which constitutes a leading principle, and in the republican creed, gives healthful action to the system."

This most artful compound of inconsistency, truth and falsehood, is the most appropriate proclamation of the chief of a party, that came into office by a triumph won under the banner of "Booty," and whose sole principle of union was the spoils of victory—of a chief who hoped to retain power, by perpetuating popular delusion. The duties of *all* public offices are proclaimed easy to *all*: experience, faithfulness, and skill, are decried as valueless! Offices are not established to give support to particular men at the public expense;—but all the people are invited, once in four years, at every presidential term, to throw themselves into the arena and contend for their fruits! A rotation in office is announced solely to awaken cupidity that could not be, and was never designed to be, gratified. But it served the purpose of putting incumbents on the alert, and to awaken some hundreds of thousands of hungry expectants, who might look for reward at the end of four years' servitude. The service has been rendered, the time has elapsed, but the fruits have not been, nor are they like to be gathered. Meritorious incumbents who have faithfully preserved their allegiance, preserve, also, their places.

But on this subject, let General Jackson be his own judge. Upon this subject he once entertained sound opinions, or his hypocrisy has never been surpassed. In his celebrated letter to Mr. Monroe, which did more than his military triumphs to make him President, he says, "The removal of no public officer should be effected to create a vacancy or to gratify the ambition of a favourite partisan." When this shall come to pass, "the patriot will have ample cause to tremble for the honour of his country and the perpetuity of her public republican institutions." O prophetic spirit! Has it not come to pass, and does not the heart of every patriot tremble for the *honour* of his country and the perpetuity of her institutions? Who can observe this contrast between the declarations and the practice of the man, and not feel the divine wisdom of the prayer, "Lead us not into temptation."

The true doctrines in relation to public office, are simple, and

alike beneficial to the people and the incumbents. Offices of State are created for the service of the people, as the State itself is constituted for their benefit. The emoluments of the officer is an accident, not an object, of the creation. Rotation in office is not a leading principle of republican creed, and does not give healthful action to the system. Such doctrines have a demoralizing effect, tending to discourage industry, and to create numerous, anxious, idle, venal expectants of office. Their absurdity becomes apparent, by following them out to their proper results. Even if we limit the proposition, by saying, that all men, duly qualified, are entitled to participate in official emoluments, it will be obvious, that an attempt to reduce it to practice, must produce a change every hour, in every office in the country. The proper principle is, that public officers are the agents of the people, appointed directly or indirectly, as the people have determined, and should be changed, only, as the public interests require. Like other agents, they should receive a moderate and just compensation for their services, with the assurance of its continuance, whilst those services are faithfully rendered. Towards its servants, the State should pursue the course of every prudent individual, in his own affairs, and never discharge a competent, *experienced*, and faithful agent, to receive others in quick succession, who engage with a view to wages, and perhaps illegal *vails*, and whose capacity is to be acquired at public expense, and whose morals will be those of the gamester, because their existence depends upon chance, or what is the same thing, upon the caprice of another.

Let us now observe, how far the practice of the founders of the republic and their immediate disciples, and that of the new dynasty, accords with their respective principles. For forty years which had preceded the inauguration of President Jackson, the removals of civil officers, as far as can be ascertained from the public records, amounted to *seventy-three* only—less than an *average of two per annum*. During the twelve years of the administration of Washington and of the first Adams, there were *twenty-two* removals—all, no doubt, with exclusive reference to the faithful execution of the laws.

Mr. Jefferson came into office by virtue of what has frequently been termed a “civil revolution;” during which, party feelings, greatly excited, might have stimulated and extenuated vindictive measures against sturdy adversaries. He found almost all the public offices in possession of his political opponents—a fact which shows, that although “rotation in office,” be not threatened by the President, its dread suffices, whilst the officer, is dependent upon him, to produce strong cohesion. Some of these opponents, especially marshalls and attorneys, had rendered themselves odious to the people by uncalled for zeal in enforcing the obnoxious sedition law.

Others had been commissioned in the last moments of his predecessor, thus depriving him of the appointment. And yet, under all these exciting circumstances, the whole number of removals by Mr. Jefferson, in eight years, was *thirty-six* only; less than five per annum.

Mr. Madison, who proclaimed and always held the doctrine, that the President was liable to impeachment for the retention of an evil, or the dismissal of a good, officer, in eight years, removed *five* civil officers,—Mr. Monroe *nine*,—and Mr. Adams, the reviled John Quincy Adams, in four years made *two* removals. Had the last gentleman been less regardful of the purity of our institutions, and the independence of our citizens, he would have rendered the triumph of his rival, at least, more difficult. But, he was a martyr to the independence of public officers, and the freedom of opinion. His great offence to the disciples of Jacksonism was his resistance to the “rotation in office,” which made all public places the “*spoils of victory*.”

When General Jackson entered upon office, there had been no enforcement of odious laws; and instead of appointments on the eve of his accession, derogatory to his rights, the executive action had been, for months preceding, suspended; and on the day of his inauguration there were more offices vacant, the filling of which had been postponed for the purpose of conferring the patronage on him, than the whole number of removals by Mr. Jefferson in his eight years.

Within one year, next following General Jackson’s inauguration, there were, at least, one hundred and ninety-six, if not more than two hundred, expulsions; double, nearly three times as many, as during the whole forty years of all his predecessors! And this, too, when the vastly greater proportion of the offices were in the hands of his friends. To these removals are to be added 490 removals of post-masters, hundreds of inspectors, clerks, deputy-collectors, deputy-marshalls, secretaries, and other subordinates, swelling the amount from 1500 to 2000, in a single year! Nor has the proscription yet been stayed.\*

By this nefarious policy, the administration has acquired an army amounting to near fifty thousand well paid mercenaries; who, spread over the whole surface of the country, mingle with and endeavour, in many instances but too successfully to sway, the people in their primary assemblies. This was a political offence which Jefferson could not pardon, and which Jackson most hypocritically denounced. The first addressed the various officers of his administration thus:

“The President of the United States has seen *with dissatisfaction*, officers of the General Government taking, on various occasions, active parts in the

\* Speech of Mr. Sprague, in Senate.

election of public functionaries whether of the General or State Governments. Freedom of elections being essential to the mutual independence of government and the different branches of the same government, so vitally cherished by most of our constitutions, it is *deemed improper* for officers depending on the executive of the Union, to attempt to control or influence the free exercise of the elective right; and further, it is expected, that he, (the officer,) will not attempt to influence the votes of others, nor take any part in the business of electioneering; this being deemed *inconsistent with the constitution and his duties to it.*"

The inaugural address of General Jackson, of the 4th of March 1829, contains a principle of the same kind, but tainted with the poison which pervades all his measures, an excitement to a struggle for participation in office, which he well knew must render futile all charges to refrain from illegitimate influence over the elective franchise.

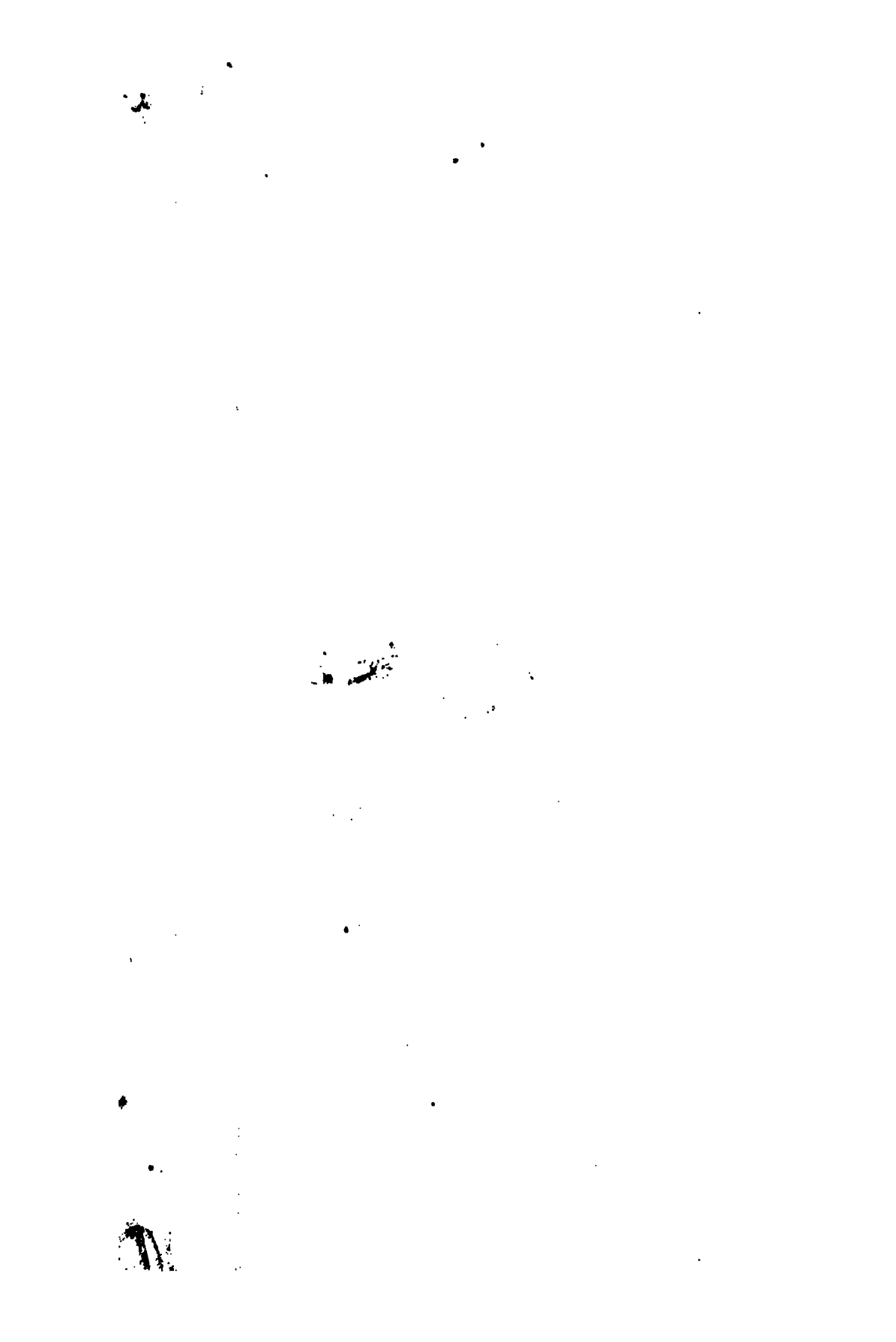
"The recent demonstration of public sentiment," he says, "inscribes on the list of executive duties in characters too legible to be overlooked, the task of REFORM; which will require, particularly, *the correction of those abuses, that have brought the patronage of the Federal Government into conflict with the freedom of elections, and the counteraction of those causes which have disturbed the rightful course of appointment, and have placed, or continued power in unfaithful or incompetent hands.*"

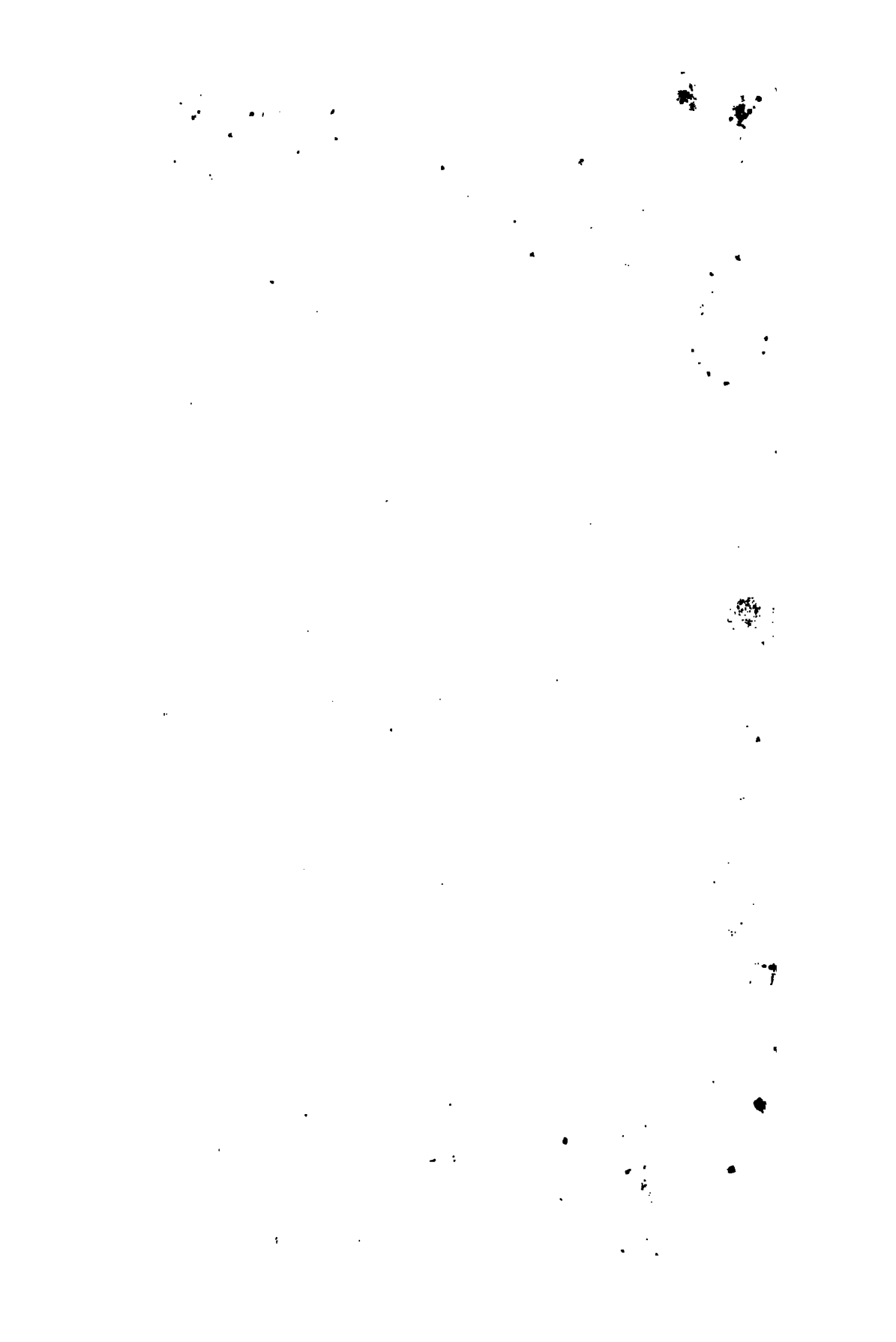
So much for the theory; for the adverse practice under it, we refer to the elections in New York, in Philadelphia, in every place where the officers of the government are located, and, more especially, we refer to the broad comment which has lately been given to the text, in the State of Ohio. On the 8th of January, 1834, a convention, under the denomination of "the friends of the present administration," assembled at Columbus to appoint delegates to represent the party, in *a proposed national convention to be holden in May, 1835, to nominate* a successor to General Jackson. This Ohio convention of "the friends of the present administration," was composed of one hundred and seventy persons; of whom seventy-seven were office holders. A gentleman holding the office of District Judge, under the appointment of the President, not then confirmed by the Senate, in his character of a "central committee man," called a meeting (by advertisement in a public newspaper) of the friends of the administration, in a particular county, for the purpose of naming delegates to the convention at Columbus. All these things were matters of public notoriety. The convention, among other things constituted a "central committee, with electioneering jurisdiction, co-extensive with the territorial limits of the State." Of this committee composed of *seven* persons, *five*, are officers holding appointments under the executive: viz. one district attorney; two receivers of public moneys; one surveyor of the Virginia military lands; and one post-master.

But it has been discovered that an army of 50,000 mercenaries already in place, and a half million of hungry expectants, are

insufficient, entirely to subjugate twelve millions of freemen, and the jannissary bands are to be enlarged by all the force which can be obtained from the directors and stockholders of the Government pet banks, and their debtors, in every State ; all of whom are, through their interests, to be enrolled in the executive battalia.

That measures such as these, if successful, must put the liberties of the country at the mercy of the Executive, cannot admit of a doubt. A subservient Congress may be attained by them ; and though the forms of our government may be preserved, a tyranny as effectual as if sustained by armed cohorts, will be established. But will such measures be successful? We answer confidently, No; if they be timely resisted. The interests of the people furnish the true, the only true rules of right in politics; and whilst the people are free they will always, sooner or later, be pursued. Man in the mass, as in the individual, is liable to error. Under deceptive lights the mass may mistake its welfare; but, experience is ever at hand with her correctives, and happy are the wanderers when her lessons are not too dearly gained. The hand of that experience is upon us, heavily upon us. The means of happiness which years of labour had procured, are hourly stealing away ; but with them, the clouds which had obscured the public sense, are, also, departing; and the people, rising in their might, will shake from them, as dew-drops from the lion's mane, the vampire which is fatally draining the current of their prosperity. To remove the darkness which rests upon the people, it is necessary, only, THAT THERE BE LIGHT.







\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

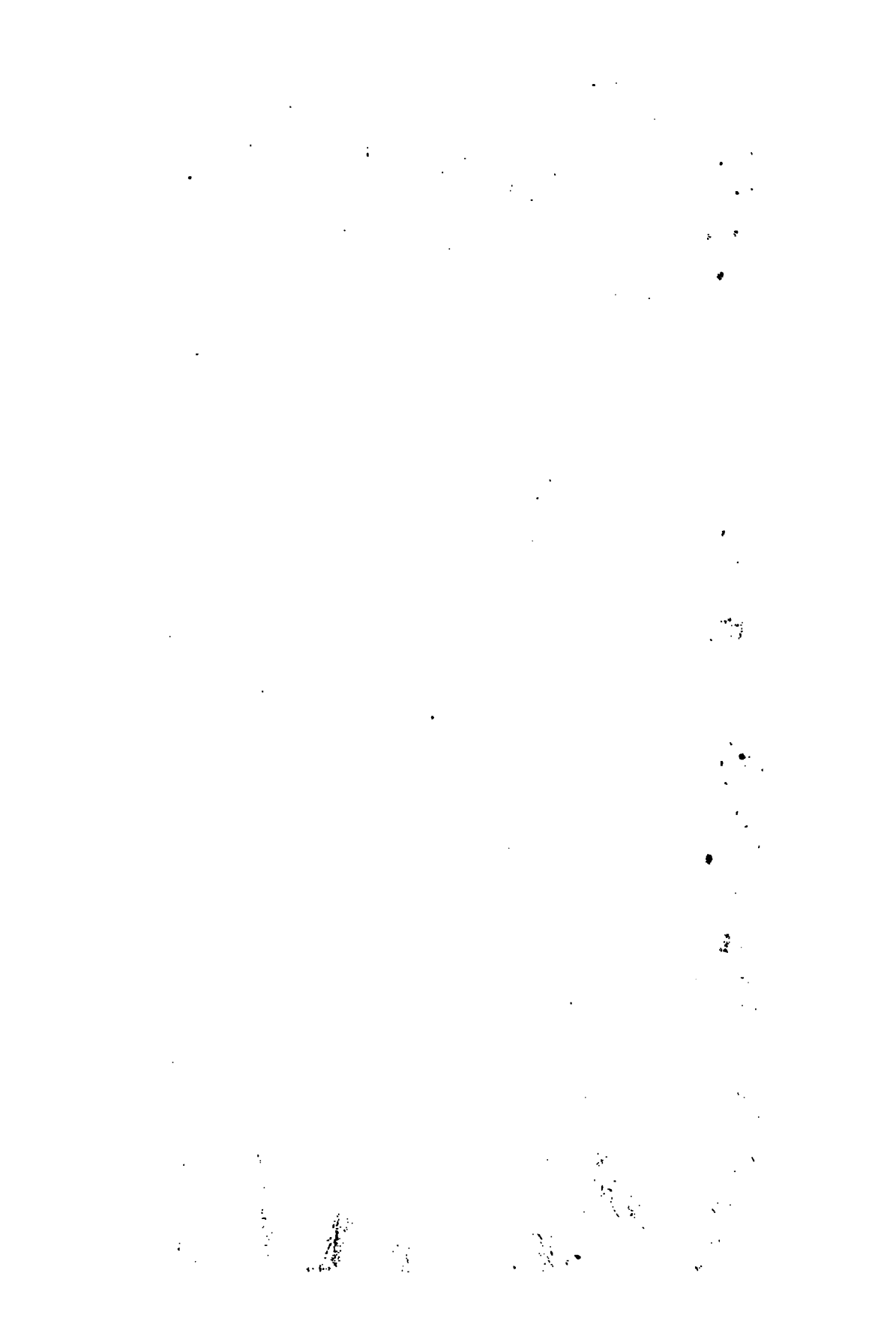
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



IN PRESS,

THE CELEBRATED

**BLUE BOOK;**

*Which will be Published on the 4th of July,*

**BY KEY & BIDDLE,**

**23 MINOR STREET, PHILADELPHIA,**

TO WHICH WILL BE APPENDED,

THE REPORT OF THE MAJORITY OF THE

**POST OFFICE COMMITTEE.**











The borrower must return this item on or before the last date stamped below. If another user places a recall for this item, the borrower will be notified of the need for an earlier return.

*Non-receipt of overdue notices does **not** exempt the borrower from overdue fines.*

**Harvard College Widener Library**  
**Cambridge, MA 02138 617-495-2413**



**Please handle with care.**  
Thank you for helping to preserve  
library collections at Harvard.



